



# FACT SHEET:

## Human Trafficking & Forced Labor in For-Profit Detention Facilities

### Strategic Litigation in U.S. Federal Courts



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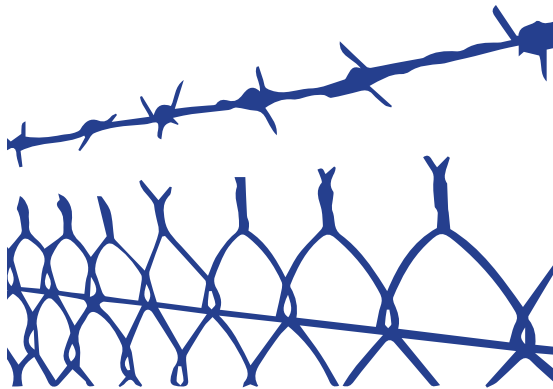
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### Strategic Litigation in U.S. Federal Courts



Congress passed the Trafficking Victims Protection Act of 2000 (TVPA) to inject “new potency in the Thirteenth Amendment’s guarantee of freedom: whether on farms or sweatshops, in domestic service or forced prostitution.”<sup>1</sup> Federal criminal law has long recognized forced labor under threat of criminal sanction as a form of involuntary servitude.<sup>2</sup> In 2003 Congress added a powerful enforcement mechanism: a private right of action permitting victims to hold their traffickers accountable.<sup>3</sup> In the 15 years since Congress created the civil provision under the Trafficking

Victims Protection Reauthorization Act (TVPRA), trafficking survivors have brought more than 270 cases alleging forced labor and involuntary servitude in a wide array of contexts, ranging from slaughterhouses to construction sites, from nursing homes to mansions.<sup>4</sup> Many traffickers who previously would have enjoyed impunity must now answer for their crimes in federal civil courts.

In the past four years, civil attorneys have filed cutting-edge federal trafficking cases against individuals and entities associated with the U.S. penal system. At least 17 civil cases include allegations that private prison corporations, municipalities, and detention facilities (among others) have violated federal anti-trafficking, involuntary servitude, and forced labor laws.<sup>5</sup> Six of these cases involve claims of abuse committed by private corporations against civil immigration detainees. An additional six cases charge that municipalities and other officials conspired to create a system of debt servitude. The remaining five cases point to exploitation in a range of settings, including a purported drug rehabilitation facility, the mental health unit of a prison, and a monitored release program. This factsheet analyzes this litigation, drawing lessons from both ongoing and resolved cases.

## I. LEGAL FRAMEWORK

Under the Thirteenth Amendment to the U.S. Constitution, “[n]either slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.”<sup>6</sup> Section Two of the Amendment, which gives Congress the power to “enforce this article by appropriate legislation,” is one

of the sources of Constitutional authority for the Trafficking Victims Protection Act of 2000 and its reauthorizations.<sup>7</sup>

The Thirteenth Amendment’s carve-out for “slavery and involuntary servitude” as criminal punishment bars some trafficking claims against penal actors.<sup>8</sup> However, the exception is limited. First, it only applies to people who have been *convicted* of crimes. This excludes, for instance, people awaiting trial, as well as civil immigration detainees. Additionally, the Thirteenth Amendment only excludes labor compelled *as a punishment for crime*. For this reason, the exception does not foreclose suits by plaintiffs allegedly forced to work in order to pay off debts to state authorities.

Plaintiffs subjected to involuntary servitude or forced labor as a consequence of criminal convictions face significant barriers to successful litigation under the TVPRA. However, prisons and other post-conviction facilities do not have carte-blanche to abuse inmates and exploit their labor. Several ongoing cases, discussed below, are testing the extent to which the TVPRA can serve as a bulwark against abuse in all detention facilities.

## II. FEDERAL TRAFFICKING CASES

### Debt Bondage and Detention

Federal law (18 U.S.C. § 1581) prohibits holding a person in “debt servitude” or peonage. Plaintiffs have filed at least six cases under the federal human trafficking civil cause of action, codified at 18 U.S.C. §1595, in which they allege private and public officials conspired to hold the plaintiffs in debt bondage, jailing them and forcing them to work off their debts. The civil complaints allege elaborate schemes in which private companies, judges, municipalities, and others colluded to target indigent individuals for minor infractions, slapping them with fines they could not pay. As the debts accrued, the perpetrators allegedly jailed their victims, informing them that early release would be possible, but only if the detainees performed manual labor. Of the six debt bondage-related cases filed under the Trafficking Victims Protection Reauthorization Act, three are ongoing; two settled, and one was voluntarily dismissed.

Debtors’ prisons are unconstitutional. In *Bearden v. Georgia*, the Supreme Court held that “the State cannot impos[e] a fine as a sentence and then automatical[ly] convert[it] it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.”<sup>9</sup> But the violations plaintiffs describe in these cases go one step further: not only did officials allegedly conspire to jail the plaintiffs for not being able to pay off debts, the officials also compelled them to work in order to pay off those same debts.<sup>10</sup>

#### *McCullough v. City of Montgomery*<sup>11</sup>

Ten plaintiffs filed suit in July 2015 against the city of Montgomery, Alabama, its mayor, the presiding judge of a municipal court, and a private corporation that provides debt collection services for

probation fines. Plaintiffs claimed that the defendants targeted them for minor criminal violations, imposed fines, and then incarcerated them when they were unable to pay their bail. The authorities credited the debtors \$50 for each day they remained incarcerated. The plaintiffs also alleged that they “were further faced with a coercive promised reduction of their debts” if they performed janitorial tasks in the jail, court, or other city-owned buildings.<sup>12</sup>

Police stopped and ticketed plaintiff Algi Edwards, for example, for having an expired tag and driving with a suspended license. The city claimed that Edwards owed \$3,500 for fines and costs associated with these and other traffic infractions. Edwards could not pay. Local authorities sent him to jail, and told him that he could reduce his debt if he cleaned jail cells and picked up trash for the city. He performed unpaid labor for 75 days to reduce his time in jail.

The District Court of the Middle District of Alabama denied all of the municipal defendants’ motions to dismiss the plaintiff-debtors’ peonage claims under the TVPRA, save one.<sup>13</sup> The district court highlighted the similarity between the defendants’ alleged acts and a practice declared unconstitutional by the Supreme Court over a century ago in *US v. Reynolds*. In the *Reynolds* case, the owner of a plantation, Reynolds, entered into so-called “criminal surety” agreements, whereby he (as surety) would pay bail for convicts in exchange for the convicts’ labor on the plantation.<sup>14</sup> If convicts breached the labor agreements, they faced rearrest.<sup>15</sup> Because the criminal surety system enabled people like Reynolds to secure convicts’ labor “under pain of recurring prosecutions,” the Supreme Court held that this practice—sanctioned at the time by Alabama law—violated federal anti-peonage provisions. The Supreme Court determined that the practice also violated “rights intended to be secured by the Thirteenth Amendment.”<sup>16</sup>

In the current case, the *McCullough* court analogized the charges to the surety practice, noting that “[w]hat plaintiffs allege in this complaint is a manifestation of th[e] same condition [peonage, as described in *Reynolds*], yet to be eradicated.”<sup>17</sup> While the plaintiffs in this case were *already in jail* when they were forced to work - as opposed to the victims in *Reynolds*, who merely knew that they *would be incarcerated* if they did not perform labor - the court declared this “not a meaningful distinction” in light of the fact that “the duration of [the plaintiffs’] incarceration was tied to their work.”<sup>18</sup> The crux of the matter was that the plaintiffs’ “choice” between working and being incarcerated was not a voluntary one: in fact, in the district court’s words, “[u]nder defendants’ understanding wherein the choice between work and continued incarceration is voluntary, it is not clear what would be involuntary.”<sup>19</sup>

**The plaintiffs’ “choice” between working and being incarcerated was not a voluntary one: in fact, ... “[u]nder defendants’ understanding wherein the choice between work and continued incarceration is voluntary, it is not clear what would be involuntary.”**

The case was ongoing as of April 19, 2018, but stayed during an interlocutory appeal to the 11th Circuit.

*Mitchell v. City of Montgomery*<sup>20</sup>

Plaintiffs in *Mitchell v. City of Montgomery* alleged facts similar to those described in *McCullough v. City of Montgomery*. Tequila Ballard, one of the plaintiffs, claimed that police arrested her for unpaid traffic tickets. The Montgomery Municipal Court judge told her she owed \$4,985. When she informed the court she could not pay, the court ordered her to spend one day in jail for every \$50 she owed, for a total of 99 days. Once in jail, Ms. Ballard was offered the “opportunity” to reduce her debt by an additional \$25 per day by cleaning bathrooms for no pay. Desperate to get out of jail and take care of her four children, Ms. Ballard agreed to perform the labor.

Likewise, police arrested Sharnalle Mitchell for unpaid traffic tickets. The court sentenced her to a jail term commensurate with her debt. Jail guards told Ms. Mitchell that she could “work off” an additional \$25 per day by cleaning floors and wiping jail bars. Like Ms. Ballard, Ms. Mitchell also had young children. She agreed to perform the labor to get out of jail as soon as possible.

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The parties settled their injunctive and declaratory relief claims.<sup>21</sup> Defendants agreed to abide by official Judicial Procedures for the Municipal Court of the City of Montgomery set forth by the Middle District of Alabama. These requirements included that the Municipal Court make a determination as to defendants’ indigence before requiring payment of fines or other costs. Under the terms of the agreement, indigent defendants may be required to pay no more than \$25 per month to pay off fines, or, alternatively, may choose to perform community service. They may not be imprisoned in order to pay off their debts.

Four additional cases included similar allegations of peonage and debt bondage. *Chapman v. City of Clanton*<sup>22</sup> and *Thomas v. City of St. Ann*<sup>23</sup> were ongoing as of April 19, 2018. *Bell v. City of Jackson*<sup>24</sup> and *Jenkins v. Jennings*<sup>25</sup> both settled. In *Bell v. City of Jackson*, the district court entered a declaratory judgment against the city. The court required the city to overhaul its bail system.<sup>26</sup> In *Jenkins v. Jennings*, the terms of the settlement required the City of Jennings to create a \$4.75 million settlement fund to be disbursed among class members, their attorneys, and a *cy pres* recipient.<sup>27</sup> The case also resulted in a permanent injunction requiring the City of Jennings to take several remedial measures, including a drastic overhaul of the bail system and improvements to jail conditions.

## Forced Labor Allegations in Immigration Detention Facilities

Undocumented immigrants held by federal authorities face administrative detention, which is civil—not criminal—in nature. Therefore, they do not fall within the Thirteenth Amendment’s carve-out for people convicted of crimes. Plaintiffs in six federal civil cases have alleged forced labor and other abuses in immigration detention facilities owned by GEO Group or CoreCivic, the two largest private correctional corporations in the United States. As of April 19, 2018, all of the cases were ongoing.

*Raul Novoa et al v. GEO Group*<sup>28</sup> (California)

Raul Novoa, a former immigrant-detainee, filed suit against GEO Group in December 2017 in the Central District of California. Novoa, who was brought to Los Angeles at the age of four, is now a legal permanent resident of the United States. Between June 2012 and February 2015, however, he was detained at the civil immigration detention facility owned by GEO Group in Adelanto, California.

In his complaint, Novoa claims that GEO forced him to work as a janitor and a barber, paying him only \$1 per day during his nearly three-year confinement. GEO allegedly extracted his labor in two ways: by threatening to put him in solitary confinement if he refused to work, and also by charging him for food and water, which he could only afford by earning money from GEO.

Novoa brought suit on behalf of himself and all others who worked while detained at GEO's Adelanto Detention Center. The complaint alleged that GEO violated California's minimum wage and unfair competition laws, the common law prohibiting unjust enrichment, the California Trafficking Victims Protection Act, and the federal Trafficking Victims Protection Act. As of April 19, 2018, the case was ongoing.

*Carlos Gonzalez v. CoreCivic*<sup>29</sup> (California)

Five asylum-seekers filed suit against CoreCivic in December 2017 in the Southern District of California. Plaintiffs include both past and current detainees at CoreCivic's Otay Mesa civil immigration detention facility. The plaintiffs allege that CoreCivic forced them to work as janitors, cleaning bathrooms, stairwells, the lobby, the kitchen, the cafeteria, and CoreCivic's on-site medical facility. They allege that they were forced to do this work as part of the company's "Voluntary Work Program."

In their complaint, plaintiffs allege that CoreCivic secured their labor in several ways: by threatening them with solitary confinement, by revoking family visitation rights, and by withholding mail delivery. Regardless of the hours the detainees worked, CoreCivic only paid them between \$1 and \$1.50 per day. The plaintiffs also claim that CoreCivic forced them to pay for items including food, water, and medicine, which they could only afford if they worked for CoreCivic.

Plaintiffs in this case seek to certify multiple classes, including a class of civil immigration detainees who performed work at the Otay Mesa Facility as part of the "Voluntary Work Program," detainees who performed work for no compensation, and detainees who performed labor at threat of solitary confinement or in exchange for basic necessities, like food. As of April 19, 2018, the case was ongoing.

*Martha Gonzalez v. CoreCivic*<sup>30</sup> (Texas)

Martha Gonzalez filed suit in February 2018 on behalf of herself and similarly situated individuals who allege they were required to perform unpaid or underpaid labor in CoreCivic's facilities. According to her complaint, Ms. Gonzalez came to the United States with the help of smugglers in an effort to escape a physically and mentally abusive partner. Her smugglers trafficked her into forced

prostitution. She eventually escaped and contacted U.S. immigration authorities. Officials placed her in deportation proceedings and sent her to CoreCivic's Laredo Detention Center. There, she alleges that she was forced to work for \$1 per day, under coercive threats similar to those described in *Carlos Gonzalez v. CoreCivic*. Ms. Gonzalez eventually received a T-1 Visa for victims of trafficking, and was freed from the detention center. As of April 19, 2018, the case was ongoing.

*Sylvester Owino v. CoreCivic*<sup>31</sup> (California)

Sylvester Owino and Jonathan Gomez filed a federal civil suit against CoreCivic in May 2017 in the Southern District of California, claiming violations of 18 U.S.C. § 1589 (forced labor), state trafficking and labor laws, and the common law. Owino and Gomez allege that CoreCivic forced them to engage in various types of labor under threat of solitary confinement. Plaintiffs seek to certify three classes: a "Nationwide Forced Labor Class," consisting of all civil immigration detainees who performed forced, uncompensated work for CoreCivic at any facility nationwide (during an established time frame); a "California Forced Labor Class," consisting of the same, only in California; and a "California Labor Law Class," consisting of civil immigration detainees who worked for \$1 per day in CoreCivic's California detention facilities.

In January 2018, plaintiffs in *Carlos Gonzalez v. CoreCivic* and *Sylvester Owino v. CoreCivic* moved to consolidate their cases. As of April 19, 2018, these cases were ongoing.

*Alejandro Menocal v. GEO Group*<sup>32</sup> (Colorado)

In October 2014, several current and former civil immigration detainees at a facility in Aurora, Colorado sued the GEO Group, the company operating the detention center. Their claims related to two separate work programs: the "Voluntary Work Program" and the "Housing Unit Sanitation Program."

Under the so-called "Voluntary Work Program," inmates perform tasks, such as "maintaining the on-site medical facility, doing laundry, preparing meals, and cleaning various parts of the facility" for a payment of \$1 per day. Plaintiffs argued that 1) they should have been paid in accordance with Colorado's minimum wage statute, and that 2) defendants were unjustly enriched by only having to pay them \$1 per day. The court dismissed the minimum wage claim on grounds that plaintiffs were not employees. However, the court allowed the unjust enrichment claim to proceed, on grounds that GEO was unjustly enriched if it indeed avoided hiring janitors to do the work.

Plaintiffs also brought a claim under the federal trafficking statute, 18 U.S.C. § 1595, alleging that under the "Housing Unit Sanitation Program," defendants had forced them to clean their living areas under threat of solitary confinement. Defendants sought to dismiss the TVPRA claim. Geo Group did not dispute that they had such a policy. Rather, they argued that the TVPRA was inapplicable to the plaintiffs because Congress had contemplated a completely different kind of victim in passing the Trafficking Victims Protection Act in 2000. The district court rejected that claim, accepting plaintiffs' argument that "the plain text of the TVPRA reaches any type of forced labor."<sup>33</sup>



The defendants also argued that the TVPRA claim should be dismissed because of the so-called “civic duty” exception to the Thirteenth Amendment. Defendants pointed to a case decided year 1997, in which the Fifth Circuit had held that “an immigration detainee forced to work in the kitchen under threat of solitary confinement was not subjected to involuntary servitude in violation of the Thirteenth Amendment.”<sup>34</sup> The district court rejected this argument, noting that the “civic duty” exception was grounded in the Thirteenth Amendment, which predated the TVPRA. The powerful implication is that the forced labor statute, 18 U.S.C. § 1589, might constrain or forbid certain forms of involuntary servitude *even in cases in which the Thirteenth Amendment would otherwise allow it*.

The court certified two classes in February 2017: a TVPRA class, which includes all individuals detained in the Aurora Detention Facility for the ten years prior to the filing of the complaint, and an unjust enrichment class, comprised of all people who worked in GEO’s “Voluntary Work Program” in the three years before the case was filed. The Tenth Circuit Court of Appeals affirmed the class certification in February 2018. A settlement conference was scheduled for May 2018.

*Wilhen Hill Barrientos v. CoreCivic* (Georgia)<sup>35</sup>

Three plaintiffs filed suit against CoreCivic on April 17, 2018, on behalf of themselves and similarly-situated individuals. The plaintiffs, two current and one former immigrant-detainee, allege that CoreCivic forces detainees to work for between \$1 and \$4 per day at its Stewart facility in Georgia. According to the complaint, CoreCivic charges detainees for hygiene products, edible food, and access to phones; detainees therefore confront a “choice” between working for CoreCivic or living without basic necessities. Plaintiffs also claim that CoreCivic punishes detainees if they refuse to work, sometimes placing them in solitary confinement. As of April 19, 2018, the case was ongoing.

*State of Washington v. GEO Group*<sup>36</sup> (Washington)

In addition to the federal civil actions filed by immigration detainees under the TVPRA, the Attorney General of Washington State sued the GEO Group in a first-of-its-kind wage case in September 2017. The Attorney General’s complaint alleges violations of state minimum wage law, and common-law unjust enrichment. The Attorney General seeks a declaratory judgment that detainees are employees and GEO Group is an employer; an injunction stopping GEO from paying detainees subminimum wages; and disgorgement of the amount that GEO has been unjustly enriched by underpaying detainees.<sup>37</sup> The case, removed from state to federal court, was ongoing as of April 19, 2018.

These cases remain in active litigation, but it is possible to draw some initial conclusions based on orders issued to date. Most broadly, courts have shown themselves willing to consider trafficking and forced labor claims in the context of civil immigration detention facilities. One court even certified as a class action, with a class potentially including as many as 60,000 members. That court rejected

**Courts have shown themselves willing to consider trafficking and forced labor claims in the context of civil immigration detention facilities.**

defendants' claims that the class certification "poses a potentially catastrophic risk to [the private prison company's] ability to honor its contracts with the federal government."<sup>38</sup>

Finally, an open question remains as to the U.S. government's role in these cases - and in these alleged abuses. The private immigration detention centers operate under contracts issued by the Department of Homeland Security. Although some of the immigration detention defendants have tried to raise DHS approval of their policies and operations as a defense, this has not achieved significant traction in the pending cases.<sup>39</sup>

## **Allegations of Forced Labor in an Immigration Detention Early Release Program**

*Vasquez v. Libre by Nexus*<sup>40</sup> (California)

*Vasquez v. Libre by Nexus*, a case filed by two asylum-seekers from Honduras, challenges another "alternatives to detention" scheme. Immigration Customs and Enforcement ("ICE") detained both of the asylum-seekers. The immigrant-detainees posted bond with financial help from Libre by Nexus, a private corporation that provides ankle monitoring devices. According to the complaint, Libre by Nexus led the detainees to believe that the company was affiliated with ICE, and that payment to the corporation to rent ankle monitors was the only option for release from detention. In reality, Libre by Nexus arranges bail bonds through third parties. The company "purports to 'securitize' those bonds via placement of GPS ankle monitors on immigration detainees, which purportedly keep detainees from fleeing."<sup>41</sup> Plaintiffs allege that Libre by Nexus subjected them to exorbitant and undisclosed fees, forcing them to haul extremely cumbersome ankle monitors under threat of being returned to detention. Arguing that the "forced hauling and charging of the monitor is labor performed as a condition of the bond, or debt servitude," plaintiffs asserted claims under 18 U.S.C. § 1581 (prohibition on peonage) and 18 U.S.C. § 1589 (prohibition on forced labor). The case was ongoing in federal court in California as of April 19, 2018.

## **Convict Labor: The Exception to the Thirteenth Amendment Prohibition on Involuntary Servitude**

Because the Thirteenth Amendment does not prohibit slavery or "involuntary servitude as punishment for crime where the party has been duly convicted, TVPRA claims against prisons (or other post-conviction facilities) present special challenges.<sup>42</sup> Importantly, however, prisons do not have carte-blanche to abuse inmates and exploit their labor. Cases brought under the TVPRA on behalf of criminally-convicted inmates may establish precedents further limiting the exception to the Thirteenth Amendment. The cases analyzed below provide insight into trafficking claims brought within this more complex context.

*Copeland v. C.A.A.I.R.* <sup>43</sup> (Oklahoma)

In *Copeland v. C.A.A.I.R.*, plaintiffs opted to enter a residential drug and alcohol rehabilitation program in lieu of serving time in prison for various crimes. According to the complaint, however, the “treatment program,” run by Christian Alcoholics & Addicts In Recovery (C.A.A.I.R.), was part of a scheme to hold the plaintiffs in forced labor. <sup>44</sup> Instead of receiving drug counseling, C.A.A.I.R. allegedly forced plaintiffs to work in a chicken abattoir without compensation, under constant threat of rearrest. Plaintiffs also claimed that defendants denied them necessary medical care, even after they sustained injuries in the chicken processing plant.

Defendants filed a motion to dismiss, arguing that the plaintiffs had chosen to enter the diversion program as an alternative to prison. The fact that plaintiffs would be incarcerated if they left the program did not create a condition of involuntary servitude, defendants argued, but rather reflected the reality of a difficult choice.<sup>45</sup> Plaintiffs countered that “CAAIR’s residents are not prisoners, but rather persons who are supposed to be provided legitimate treatment in a *non-penal* institution,” and that “[t]he relevant inquiry is not whether Plaintiffs ‘chose’ to enter CAAIR, but whether the alternative they ultimately faced - work at [the poultry farm] or go to prison - was a legitimate one. It was not.” <sup>46</sup> As of April 19, 2018, the case was ongoing. <sup>47</sup>

*Figgs v. GEO Group* <sup>48</sup> (Indiana)

In *Figgs v. GEO Group*, plaintiffs include more than 100 state prisoners with developmental and mental disabilities held in the “Mental Health Unit” of a privately-run correctional facility. The plaintiff-prisoners allege that while defendants claimed to provide treatment to individuals held at the Mental Health Unit, they instead forced them to engage in labor such as cleaning. Defendants paid the prisoners approximately \$10 per month. This federal trafficking case, filed in January 2018, was ongoing as of April 19, 2018.

*Does v. Michigan Department of Corrections* <sup>49</sup> (Michigan)

In *Does v. Michigan Department of Corrections*, minors imprisoned in adult criminal detention facilities brought suit against the Michigan Department of Corrections and its personnel, the Michigan Governor, and individual wardens. The complaint alleged violations under various provisions of the TVPRA, including 18 U.S.C. § 1584 (involuntary servitude), § 1590 (prohibition against trafficking), and § 1591 (prohibition against sex trafficking). The minor plaintiffs alleged that the prison staff “facilitated the prison bartering and sex trafficking of youth” by housing vulnerable minors with known adult offenders, punishing minor victims who resisted being trafficked for sex inside the facility, and “permitting a physical and cultural environment that supports the trafficking of vulnerable persons.”<sup>50</sup> Plaintiffs alleged that defendants benefited from the prison sex trafficking system by taking kickbacks and favors for not intervening in the trafficking, and also benefited by avoiding costs of measures that would have prevented and punished trafficking offenses. Critically, the allegations in this case do not allege forced labor as punishment - or in any way related to - the crimes for which plaintiffs were convicted. Therefore, the Thirteenth Amendment carve-out does not

serve as a barrier to holding defendants liable. The defendants filed a motion for summary judgment on March 2, 2018. As of April 19, 2018, the case was ongoing.

*Jewkes v. Shackelton*<sup>51</sup> (Colorado)

Plaintiffs, 10 female inmates at the Women’s Correctional Facility in Denver, Colorado, filed this case in January 2011. The prisoners alleged that correctional officers sexually assaulted them and forced them to engage in sex acts by threatening them with serious harm, all in violation of 18 U.S.C. § 1591 (sex trafficking). The plaintiffs also claimed that other defendants knowingly benefited from the officers’ human trafficking violations. Like the claims in *Does v. Michigan Department of Corrections*, the allegations in this case did not involve involuntary servitude *as punishment for plaintiffs’ crimes*, leaving the case unaffected by the Thirteenth Amendment carve-out.

In September 2011, all of the plaintiffs voluntarily dismissed their claims against the majority of the defendants, including the Colorado Department of Corrections, several directors, wardens, and correctional officers. Five plaintiffs then dismissed their suits entirely, and the remaining five plaintiffs filed a second amended complaint against a single defendant, a correctional officer. This new complaint did not include trafficking allegations.

The court dismissed three plaintiffs’ claims on summary judgment, and the two remaining plaintiffs proceeded to trial. A jury found the defendant liable for violating the plaintiffs’ rights under the Eighth Amendment, and awarded them each \$1,000 in damages. The defendant appealed the verdict, but voluntarily dismissed the appeal after the case settled for an undisclosed amount in June 2013.

### **III. CONCLUSION**

Cutting-edge use of the civil provision of the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. § 1595, has made significant inroads against exploitation arising in the penal and civil detention systems in the United States. Civil lawsuits brought by indigent people detained in debtors’ prisons and forced to work off their debts have already resulted in widespread reforms. Claims filed by civil immigration detainees have challenged corporations for their otherwise largely-unchecked treatment of detainees. And “diversion programs” alleged to fraudulently obtain forced labor are now before the courts.

The Thirteenth Amendment’s exception does not provide impunity for companies detaining immigrant-detainees, municipalities operating debtors’ prisons, or prison guards abusing prisoners. Courts have allowed lawsuits alleging labor trafficking and sex trafficking to proceed. Civil trafficking litigation is whittling down the Thirteenth Amendment carve-out for convicted individuals to its original, narrow, and plain language.

*This factsheet was written by Alexandra F. Levy, senior staff attorney at the Human Trafficking Legal Center. It was edited by Martina E. Vandenberg, president of the Human Trafficking Legal Center. Thanks to NEO Philanthropy and all of the Human Trafficking Legal Center’s generous donors for making this research and publication possible.*

## APPENDIX

List of Federal Trafficking Civil Cases Brought under 18 U.S.C. §1595 <sup>52</sup>

Case Name	Docket & Jurisdiction	Context/ Allegation Type	Status (as of 4/19/18)
Barrientos v. CoreCivic	4:18-cv-00070 (M.D.Ga.)	Civil immigration detention center	Ongoing
Bell v. City of Jackson	3:15-cv-00732 (S.D.Miss.)	Debt bondage	Settled
Chapman v. City of Clanton	2:15-cv-00125 (M.D.Ala.)	Debt bondage	Ongoing
Copeland v. C.A.A.I.R.	4:17-cv-00564 (N.D.Okla.)	Rehabilitation program	Ongoing
Does v. Michigan Department of Corrections	2:13-cv-14356 (E.D.Mich.)	Prison	Ongoing
Figgs v. GEO Group	1:18-cv-00089 (S.D.Ind.)	Mental health treatment unit in prison	Ongoing
Gonzalez (Martha) v. CoreCivic	1:18-cv-00169 (W.D.Tex.)	Civil immigration detention center	Ongoing
Gonzalez (Carlos) v. CoreCivic	3:17-cv-02573 (S.D.Cal.)	Civil immigration detention center	Ongoing (stayed pending class certification in <i>Owino v. CoreCivic</i> )
Jenkins v. Jennings	4:15-cv-00252 (E.D.Mo.)	Debt bondage	Settled
Jewkes v. Shackelton	1:11-cv-00112 (D.Colo.)	Prison	Settled
McCullough v. City of Montgomery	2:15-cv-00463 (M.D.Ala.)	Debt bondage	Ongoing
Menocal v. GEO Group	1:14-cv-02887 (D.Colo.)	Civil immigration detention center	Ongoing
Mitchell v. City of Montgomery	2:14-cv-00186 (M.D.Ala.)	Debt bondage	Settled
Novoa v. GEO Group	5:17-cv-02514 (C.D.Cal.)	Civil immigration detention center	Ongoing
Owino v. CoreCivic	3:17-cv-01112 (S.D.Cal.)	Civil immigration detention center	Ongoing
Thomas v. City of St. Ann	4:16-cv-01302 (E.D.Mo.)	Debt bondage	Ongoing
Vasquez v. Libre by Nexus	4:17-cv-00755 (N.D.Cal.)	Ankle bracelet in lieu of civil immigration detention	Ongoing



## FACT SHEET: FORCED LABOR IN FOR-PROFIT DETENTION FACILITIES

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<sup>1</sup> 153 Cong. Rec. H14114 (daily ed. Dec. 4, 2007) (statement of Rep. Conyers).

<sup>2</sup> See, e.g., *US v. Kozminski*, 487 U.S. 931, 932 (noting that “the understanding of the Thirteenth Amendment’s ‘involuntary servitude’ phrase that prevailed [in 1948]” included “cases involving the compulsion of services by the use or threatened use of...legal coercion”).

<sup>3</sup> See 18 U.S.C. § 1595. Courts have overwhelmingly rejected the idea of an implied right of action under the Thirteenth Amendment. See, e.g., *Doe v. Reddy*, 2003 WL 23893010 at \*10 (noting that “no decision has ever actually upheld a private right of action under the Thirteenth Amendment and many have rejected it”).

<sup>4</sup> The Human Trafficking Legal Center maintains a database of all cases filed under the federal civil trafficking statute, 18 U.S.C. § 1595. For access to the database, please contact [info@htlegalcenter.org](mailto:info@htlegalcenter.org).

<sup>5</sup> This fact sheet covers civil trafficking cases filed in the federal courts. Plaintiffs have made similar allegations in suits filed in state courts. For a complete list of federal cases, see *infra*, Appendix of Cases.

<sup>6</sup> U.S. Const. amend. XIII, Sec. 1 (emphasis added). Notably, the exception allows private companies to contract with publicly-run prisons, which can force inmates to work. See “Prison labour is a billion-dollar industry, with uncertain returns for inmates,” *The Economist* (March 16, 2017), available at <https://www.economist.com/news/united-states/21718897-idaho-prisoners-roast-potatoes-kentucky-they-sell-cattle-prison-labour> (“America’s publicly run prisons have been providing labour for private companies since 1979. More than 5,000 inmates take part in the scheme, known as ‘Prison Industry Enhancement.’”).

<sup>7</sup> U.S. Const. amend. XIII, Sec. 2. Committee Reports accompanying the Trafficking Victims Protection Act and its reauthorizations cite different Constitutional authorities, including Article 1, Section 8, and the Thirteenth Amendment. See, e.g., H.R. Rep. No. 110-430, at 43 (2007) (available at <https://www.congress.gov/congressional-report/110th-congress/house-report/430/1>).

<sup>8</sup> Federal courts have uniformly held that private prisons are legal. See, e.g., *Pischke v. Litscher*, 178 F.3d 497, 500 (7th Cir. 1999) (“Nor...can [we] think of any...provision of the Constitution that might be violated by the decision of a state to confine a convicted prison owned by a private firm rather than by a government. A number of cases assume the propriety of such confinements, *Richardson v. McKnight*, 521 U.S. 399, 405, 407, 117 S.Ct. 2100, 138 L.Ed.2d 540 (1997); *Spencer v. Lee*, 864 F.2d 1376, 1378 (7th Cir.1989) (en banc); *Street v. Corrections Corp. of America*, 102 F.3d 810, 814 (6th Cir.1996); one judge has said the practice is constitutional, *Pinaud v. County of Suffolk*, 52 F.3d 1139, 1161-62 (1995) (separate opinion); and to our knowledge no judge has opined to the contrary.”).

<sup>9</sup> *Bearden v. Georgia*, 461 U.S. 660, 667 (1983) (internal citations omitted). The state may imprison a person who has made bona fide efforts to pay “[o]nly if alternative measures are not adequate to meet the State’s interests in punishment and deterrence.” *Id.* at 673.

<sup>10</sup> Other plaintiffs have filed at least 10 cases seeking to enjoin the use of debtors’ prisons by municipalities and/or private corporations that do not include claims under 18 U.S.C. §1595. Most have been filed in Alabama, and typically include claims under 42 U.S.C. § 1983 for violations of the Fourth, Sixth, Eighth, and Fourteenth Amendments, common law false imprisonment, unjust enrichment, RICO, and/or state law. See, e.g., *Carden v. Harpersville*, 15-cv-01381 (N.D.Ala.), *Cleveland v. Montgomery*, 2:13-cv-00732 (M.D.Ala.), *Foster v. City of Alexander*, 3:15-cv-647 (M.D.Ala.), *Hall v. Fort Payne*, 4:15-cv-01656 (N.D.Ala.), *Foster v. Judicial Correction Services*, 2:12-cv-00724 (M.D.Ala.), *Harper v. Professional Probation Services*, 2:17-cv-01791 (N.D.Ala.), *Ray v. Judicial Corrections Services*, 2:12-cv-02819 (S.D.Ala.), *Reynolds v. Judicial Correction Services*, 2:15-cv-00161 (M.D.Ala.), *Roberts v. Black*, 2:16-cv-11024 (E.D.La.), *Rudolph v. Montgomery*, 2:16-cv-00057 (M.D.Ala.), *Woods v. Columbiana*, 2:15-cv-00493 (N.D.Ala.).

<sup>11</sup> *McCullough v. City of Montgomery*, 2:15-cv-00463 (M.D.Ala.).

<sup>12</sup> Complaint, *McCullough v. City of Montgomery*, 2:15-cv-00463 (M.D.Ala.), Dkt 1 at \*13.

<sup>13</sup> *McCullough v. City of Montgomery*, 2017 BL 76102 (M.D. Ala. Mar. 10, 2017), Court Opinion, \*14-\*16. The court dismissed the TVPRA claim against defendant Judicial Corrections Services (JCS), because plaintiffs were unable to prove that JCS knew about the plaintiffs’ coerced labor. See *id.* at \*24.

<sup>14</sup> See *U.S. v. Reynolds*, 235 U.S. 133, 139, 140 (1914).

<sup>15</sup> See *id.* at 146.

<sup>16</sup> *Id.* at 150.

<sup>17</sup> 2017 BL 76102 at \*15.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Mitchell v. City of Montgomery*, 2:14-cv-00186 (M.D.Ala.).

<sup>21</sup> See generally Judgment Granting Final Declaratory and Injunctive Relief, *Mitchell v. City of Montgomery*, 2:14-cv-00186 (M.D.Ala.) Dkt #51.

<sup>22</sup> *Chapman v. City of Clanton*, 2:15-cv-00125 (M.D.Ala.).

<sup>23</sup> *Thomas v. City of St. Ann*, 4:16-cv-01302 (E.D.Mo.).

<sup>24</sup> *Bell v. City of Jackson*, 3:15-cv-00732 (S.D.Miss.).

<sup>25</sup> *Jenkins v. Jennings*, 4:15-cv-00252 (E.D.Mo.).

<sup>26</sup> See generally Final Judgment, *Bell v. City of Jackson*, 3:15-cv-00732 (S.D.Miss.), Dkt #14.

<sup>27</sup> See generally Permanent Injunction, *Jenkins v. Jennings*, 4:15-cv-00252 (E.D.Mo.), Dkt #17.

<sup>28</sup> *Novoa et al v. GEO Group*, 5:17-cv-02514 (C.D.Cal.).

<sup>29</sup> *Carlos Gonzalez v. CoreCivic*, 3:17-cv-02573 (S.D.Cal.).

<sup>30</sup> *Martha Gonzalez v. CoreCivic*, 1:18-cv-00169 (W.D.Tex.).

<sup>31</sup> *Owino v. CoreCivic*, 3:17-cv-01112 (S.D.Cal.).

<sup>32</sup> *Menocal v. GEO Group*, 1:14-cv-02887 (D.Colo.).

<sup>33</sup> *Menocal v. GEO Group*, 113 F. Supp. 3d 1125, 1133 (D. Colo. 2015).

<sup>34</sup> *Channer v. Hall*, 112 F.3d 214 (5th Cir. 1997).

<sup>35</sup> *Barrientos v. CoreCivic*, 4:18-cv-00070 (M.D.Ga.).

<sup>36</sup> *State of Washington v. GEO Group*, 3:17-cv-05806 (W.D.Wash.). The case was originally filed in Washington state court (17-2-11422-2 (Wash. Sup. Ct.)), but was removed to federal court in October 2017.

<sup>37</sup> Notably, the District of Colorado rejected plaintiffs' claim that GEO was an employer, on grounds that "the...motive for enacting...the [Colorado Minimum Wage Order] was to protect the 'standard of living' and 'general well-being' of the worker in American industry," and therefore did not apply to people in detention, who "do not use their wages to provide for themselves." 113 F. Supp. 3d 1125, 1129. While Washington state law specifically exempts inmates at state-run detention centers from its minimum wage protections, the exemption does not cover for-profit facilities like those run by GEO Group. See generally "AG Ferguson Sues Operator of the Northwest Detention Center for Wage Violations," Washington State Office of the Attorney General (September 20, 2017) (available at <http://www.atg.wa.gov/news/news-releases/ag-ferguson-sues-operator-northwest-detention-center-wage-violations>).

<sup>38</sup> The GEO Group, Inc.'s Petition for Permission to Appeal Class Certification, *Menocal v. GEO Group*, 17-701 (10th Cir. 2017) at \*30.

<sup>39</sup> See e.g. Motion to Dismiss, *Menocal v. GEO Group*, 1:14-cv-02887 (D.Colo.) at \*4 ("Defendant did not make the determination that DHS/ICE detainees who volunteer to work should be paid \$1.00 per day. That decision was made by DHS/ICE...").

<sup>40</sup> *Vasquez v. Libre by Nexus*, 4:17-cv-00755 (N.D.Cal.).

<sup>41</sup> Complaint, *Vasquez v. Libre by Nexus*, 4:17-cv-00755 (N.D.Cal.), Dkt #1 at \*5.

<sup>42</sup> U.S. Const. amend. XIII. Sec. 1.

<sup>43</sup> *Copeland v. C.A.A.I.R.*, 4:17-cv-00564 (N.D.Okla.).

<sup>44</sup> See generally Amy Julia Harris, "They thought they were going to rehab. They ended up in chicken plants," Reveal News (October 4, 2017) (available at <https://www.revealnews.org/article/they-thought-they-were-going-to-rehab-they-ended-up-in-chicken-plants/>).

<sup>45</sup> See Motion to Dismiss, *Copeland v. C.A.A.I.R.*, 4:17-cv-00564 (N.D. Okla.), Dkt# 49 at \*16.

<sup>46</sup> Plaintiffs' Opposition to Defendants Simmons Foods, Inc.'s and Simmons Pet Food, Inc.'s Motion to Dismiss, *Copeland v. C.A.A.I.R.*, 4:17-cv-00564 (N.D.Okla.) at \*10, \*13.

<sup>47</sup> At least one case alleging similar facts has been filed in Arkansas state court, see *Fochtman v. C.A.A.I.R.*, 04CV-17-2190 (Benton Court. Cir. Ct.). After being removed to federal court in November, 2017, this case was dismissed without prejudice on March 13, 2018, due to nonsuit by plaintiffs.

<sup>48</sup> *Figgs v. GEO Group*, 1:18-cv-00089 (S.D.Ind.).

<sup>49</sup> *Does v. Michigan Department of Corrections*, 2:13-cv-14356 (E.D. Mich.).

<sup>50</sup> Complaint, *Does v. Michigan Department of Corrections*, 2:14-cv-14356 (E.D. Mich.), Dkt#1 at \*31, \*32.

<sup>51</sup> *Jewkes v. Shackelton*, 1:11-cv-00112 (D.Colo.).

<sup>52</sup> The following non-profit organizations have represented plaintiffs in one or more cases: ArchCity Defenders, Civil Rights Corps, Equal Justice Under Law, the Southern Poverty Law Center, and Towards Justice.



### About The Human Trafficking Legal Center

The Human Trafficking Legal Center is a not-for-profit, national legal clearinghouse for survivors of human trafficking. HT Legal creates a bridge between trafficking survivors and highly-skilled pro bono legal representation. Standing with trafficking survivors, HT Legal partners with pro bono law firms nationwide to hold traffickers accountable for their crimes. Pro bono litigators trained by HT Legal win compensation for survivors. With these recoveries, trafficking survivors can reclaim their lives. Since 2012, HT Legal has trained more than 3,400 pro bono attorneys and placed more than 280 trafficking-related matters at top law firms.

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