

LONG AWAITED VICTORIES AND NEW PARTNERSHIPS

2019 ANNUAL REPORT



TOWARDS JUSTICE

Dear Friends,

2019 was a year of long-awaited victories and new partnerships at Towards Justice. After five years litigating on behalf of childcare workers who work in the United States on J-1 au pair visas, we were able to deliver a multi-million-dollar settlement to benefit around 100,000 workers that not only compensates our clients for the illegal conduct they endured, but hopefully moves the needle on long-standing injustices facing domestic workers across the country and ensures that workers in this industry can bargain for higher wages and benefits. We also helped workers prevail in litigation on behalf of workers who stay overnight at their jobs, temporary workers, shepherders who work across the American west, and misclassified construction and cleaning workers.

Along with courageous named plaintiffs eager to stand up for themselves and others, we also filed new cases to address systemic impediments to economic justice and worker bargaining power, including cases on behalf of workers with disabilities paid wages as low as 18 cents an hour, child support debtors forced to work at a county recycling plant as a condition of their liberty from civil detention, and guest-workers from Southeast Asia who were defrauded out of thousands of dollars for the opportunity to come to this country to work in low-paying, menial jobs in the hotel industry. 2019 was also a year of building new partnerships as Towards Justice took up a campaign to change Colorado's wage and hour law. Much of that law has been defined by a regulation called the "Wage Order," which for decades defined who in our state was entitled to overtime, minimum wage, and workday breaks. For years, this obscure aspect of Colorado law had been the subject of intense lobbying from industry groups, resulting in a wage and hour scheme that carved out huge swaths of workers, even as workers were successful in advocating for reforms of visible big-ticket items like the minimum wage. In 2019, Towards Justice not only convinced the state to re-think the outdated Wage Order, we also brought together an inspiring coalition of workers, advocates, clergy, and organizers who joined us in advocating for change. Together, we made worker voices heard in the halls of power and achieved an impressive expansion of overtime, minimum wage, and other workplace rights for hundreds of thousands of workers across our state.

Meanwhile, our litigation program gained new leadership in 2019. Juno Turner joined us in May 2019 and her leadership has kept Towards Justice on the cutting-edge of workplace justice advocacy. We filed a variety of new cases, including attacks on the underpayment of workers with disabilities in New Mexico, manipulation of guestworker programs, and forced labor in the prison industry.

We know each of these achievements is but one step in a long road towards building worker power. As we chip away, we are ever grateful for your support and friendship. Luckily for us, this long road is populated by great friends, committed supporters, and inspiration aplenty.

Onward,

David Seligman
Executive Director



IN THE COURTHOUSE: LONG AWAITED VICTORIES

Victory for Au Pairs

With Towards Justice and Boies Schiller Flexner LLP as counsel, our au pair clients reached a settlement requiring the au pair sponsor agencies to pay \$65.5 million and to clarify that the purported “stipend” for au pairs is actually a minimum wage and au pairs can be paid more. This victory will benefit the class of nearly 100,000 au pairs that Towards Justice represented, as well as future au pairs who will be better able to bargain for well-deserved wages. This could end up being one of the largest class action settlements ever for minimum wage workers, and one of the largest ever involving antitrust violations in the labor market.

Victory for Shepherds

In November 2019, Towards Justice announced a major settlement on behalf of shepherders. Currently, thousands of shepherders work in the United States on temporary visas under which they--like hundreds of thousands of other guestworkers--lack the ability to leave their employment and work somewhere else, one of the key foundations of dignity and bargaining power in the workplace. Under the settlement, the government will no longer allow employers to fill the permanent labor need for shepherders with temporary visas. This is a major step toward eliminating a system under which shepherders are indentured to the same employer without a path to permanent residency.

Victory in the Colorado Supreme Court

In late June 2019, Towards Justice and our co-counsel at Killmer, Lane, & Newman achieved a fantastic win in the Colorado Supreme Court in a case brought exotic dancers who claimed they were misclassified and denied even minimum wages for their work—work from which dance clubs and the large corporate entities that own them have allegedly profited a great deal. When the dancers sued to recover their unpaid wages, the defendants sought to get out of the case by trying to enforce arbitration agreements that the dancers purportedly signed. The problem was that the big company that owned the clubs had never signed the arbitration agreement; it sought to enforce the agreement based on an obscure doctrine called “equitable estoppel” that courts around the country far too frequently use to allow corporate defendants to benefit from arbitration agreements they never signed. Together with our co-counsel, Towards Justice convinced the federal court not to follow the rule that several other federal courts had applied and instead to certify the issue directly to the Colorado Supreme Court. After our briefing and argument, the Colorado Supreme Court in a 7-0 opinion sided with the workers and held that arbitration agreements are no more enforceable than any other type of contract. This case has broad ramifications for workers and consumers across the country who may now be better able to enforce their rights in court.

Victory for Workers Who Sleep at the Jobsite

In September 2019, in a class action case brought by an immigrant worker who provided caretaking services to adults with disabilities, Towards Justice defeated summary judgment and won a worker-favorable victory defining how employees should be compensated for overnight work under federal law. The court found that an employer can designate overnight hours as unpaid sleep time only if it can show that the employee received five consecutive uninterrupted hours to sleep more than half the time. The court also found that an employer must provide private sleeping facilities where the employee can shut and lock the door during sleep time if that time is to be uncompensated. This is an important victory for our clients and for all residential care workers who frequently sleep at the jobsite.



IN THE COURTHOUSE: NEW ATTACKS ON SYSTEMIC INJUSTICE

Attacking the Subminimum Wage for Workers with Disabilities

In 2019, Towards Justice filed a class action lawsuit on behalf of hundreds of New Mexico workers with physical and intellectual disabilities who are employed in “sheltered workshops.” In these workshops, workers with disabilities scan and shred documents, remove staples from paper with their hands, drive around town to retrieve boxes for shredding, fix tears in documents, and perform a variety of other tasks. For their labor, workers are paid less than the New Mexico or Albuquerque minimum wage—sometimes as little as 18 cents per hour. Our clients seek an injunction against this anachronistic practice and back pay for illegal and unfair wages.



Combatting Manipulation of the J-1 Internship Program

In June 2019, Towards Justice and co-counsel Asian Americans Advancing Justice and Terrell Marshall Law Group PLLC filed a putative class action against a luxury hotel in Utah on behalf of a group of Filipino workers who worked for the hotel as purported interns on J-1 internship visas. Under the J-1 internship visa, these workers had to pay large sums of money, often their life savings, in fees. In exchange, they were supposed to obtain prestigious educational and training opportunities. Instead, our clients allege that they received none of that and were thrust into low-wage jobs where they were mistreated, underpaid, and threatened.

APNewsBreak: Lawsuit claims Utah hotel exploited immigrants

The luxury Grand America Hotel in Salt Lake City is accused in a lawsuit of luring workers from the Philippines to a program that promised training and cultural immersion but instead forced them to work long hours doing menial jobs for low pay

By BRADY McCOMBS Associated Press
June 25, 2019, 7:50 PM • 3 min read



Across the country, employers of all stripes are increasingly manipulating guestworker programs to import vulnerable workers whose visas tie them to their employer—leaving workers with almost no power in the workplace. In fact, our clients allege that the defendant in this case switched to using J-1 workers after being caught staffing the hotel with undocumented workers. Our innovative lawsuit represents a new frontier in the fight to protect workers.

Combating Forced Labor

In December 2019, we supported three clients in filing a class action complaint alleging that Lackawanna County, Pennsylvania and the private company that owns and operates the county’s recycling center forced our clients and potentially hundreds of other child support debtors to work under grueling conditions for \$5.00 per day. If the debtors declined to work at the recycling center, they remained in prison longer. We allege that this conduct allowed public agencies and a private corporation to profit at the expense of a vulnerable and captive workforce and the children who would have benefited from child support payments. This case, like our litigation on behalf of former detainees of the immigration detention facility in Aurora, Colorado, challenges the scourge of forced and

coerced labor in the criminal and civil justice systems.

Fighting for a Competitive California Bail-Bonds Market

In January 2019, Towards Justice and co-counsel filed a class action lawsuit on behalf of our clients who allege bail bond sureties and some agents in California colluded to fix bail bond premiums at the maximum allowable by law. Every year nearly one million people are arrested and taken into custody in California, and over 60% of people in California jails are there because they cannot afford to pay bail. In this case, the anticompetitive practices at stake deprive millions of people of their liberty.

Supporting Workers Challenging Wage Fixing

Towards Justice and our workers fight difficult, uphill fights, and we don't always win. In another case brought on behalf of sheepherders alleging that associations that hire and place them with ranches set wages across all ranches at precisely the minimum, our clients lost their battle in the Tenth Circuit Court of Appeals. Towards Justice and our clients were, however, heartened by the support of amicus briefing from antitrust experts and advocates, including Professors Eric Posner and Herbert Hovenkamp, often described as the dean of American antitrust law, and the Open Markets Institute. We are confident that our efforts to fight for bargaining power and a competitive labor market for some of the lowest wage workers in our economy will persist.

Continuing to Fight the Good Fight

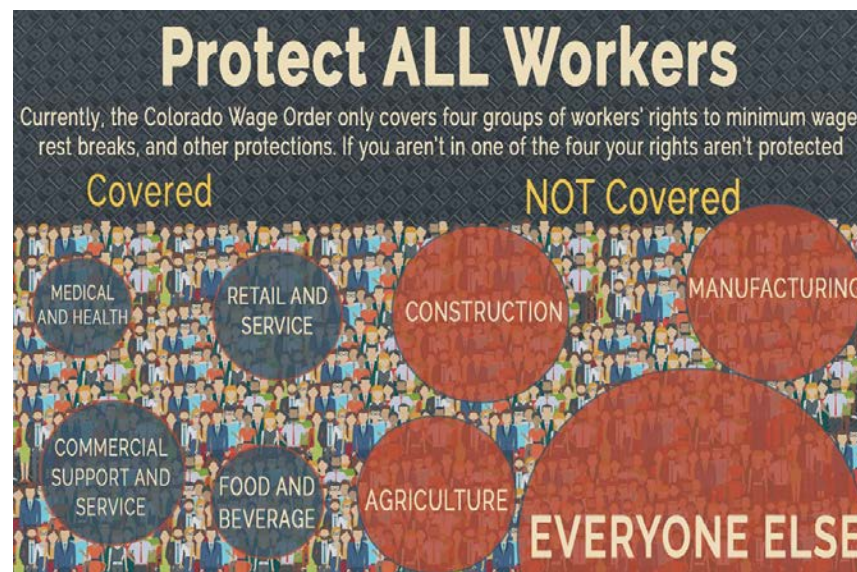
Throughout 2019, Towards Justice continued to collaborate with our clients to litigate ongoing cases ranging from our allegations of forced labor against The GEO Group, Inc. to wage and hour claims against a Denver nail salon to claims that irresponsible use of background check data deprived potential workers of opportunities. Towards Justice takes on cases that require months and years of patience, investment, and strategic thinking. We hope to report additional long-awaited victories in 2021.



IN THE HALLS OF POWER

Re-Imagining Wage and Hour Law in Colorado

After commenting for years to no avail on Colorado's "Wage Order"--the regulations enacted by the Colorado Department of Labor and Employment (CDLE) governing who's protected by Colorado minimum wage and overtime laws--Towards Justice convinced the CDLE to engage in a robust rule-making process to re-think the Wage Order. In particular, the agency considered whether to expand the categories of workers covered by minimum wage and whether to increase the minimum salary basis that managerial employees must receive to be carved out of overtime. Pulling together a passionate group of local and national partners, Towards Justice advocated for a substantial expansion of workplace rights for Colorado workers. We held educational convenings, press conferences, and roundtable events to share worker stories. We also built an inspiring coalition of workers and community groups who made sure the agency and the Governor heard from workers about how much these issues matter, while at the same time developing our own



set of extensive comments on the importance of broadening and clarifying these critical worker protections. We traveled to nine different communities from Durango to Center to Avondale to share information about potential updates to Colorado minimum wage and overtime standards, and spoke with radio, print and online journalists that reach communities across Colorado and beyond. Through these efforts, and together with our partners, we collected over 350 individual worker comments, 104 petition signatures, 33 legislator signatures, 450 postcards, and 47 oral testimonies supporting expansion of minimum wage and overtime protections in our state. The result was a proposed rule at the end of 2019 that made hundreds of thousands more Coloradans overtime eligible and expanded minimum wage and workday break protections to previously unprotected industries like construction and manufacturing. The proposed rule did not do enough for agricultural workers, and at the end of 2019 Towards Justice submitted a second round of comments to the CDLE highlighting this failure. At year end, we were awaiting the final rule promised in January 2020.

Re-Imagining Municipal Wage and Hour Enforcement

On the tail end of impressive advocacy and organizing by our partners to enact a Denver municipal minimum wage, Towards Justice provided its expertise to labor movement leaders and helped to design a robust enforcement scheme that would ensure adequate enforcement of minimum wage violations. That scheme includes the creation of Denver Labor, a new agency under the Auditor's Office that was established to protect workers against violations of Denver's labor standards laws.

Fighting Forced Arbitration

One of the most serious issues facing workers today is the proliferation of forced arbitration agreements that prevent workers from suing their employer in court or on a class action basis for wage theft, discrimination, sexual harassment, and all other manners of violations. While it will take an act of Congress to resolve the issue, there's a lot that states can do too--from expanding whistleblower enforcement mechanisms that allow workers to support public enforcement agencies in bringing suit against an employer to reforms that make it harder for employers to pack contracts with unconscionable terms. In 2019, Towards Justice continued to support advocates interested in exploring state-level policies to mitigate the harms of forced arbitration. Those efforts resulted in several bold new whistleblower enforcement bills being introduced across the country and the passage of a bill in Vermont regulating standard form contracts.

IN THE COMMUNITY

Celebrating Just Wages! 2019

We were thrilled to celebrate our work and partnerships with an inspiring group of supporters at our 2019 Just Wages! fundraiser and celebration. Each year, Towards Justice recognizes extraordinary leadership in the fight for workplace justice by presenting two Wage Justice Champion Awards at Just Wages! This year, we recognized Jenifer Rodriguez, managing attorney of Colorado Legal Services Migrant Farmworker Division and Boulder District Attorney Michael Dougherty. Both are inspiring leaders in the fight for workplace justice for Colorado's most marginalized workers.

Supporting and Engaging our Community

In 2019, Towards Justice participated in a variety of conferences, educational activities, and working groups. In the Denver community, we collaborated with the Mexican Consulate to present at their annual Semana de los derechos laborales, participated in a wage theft panel discussion with city officials and the Denver Immigrant and Refugee Commission, and brought dozens of partners together for a Day of Action for Workplace Rights. We also shared workplace rights information with immigrant and refugee communities across the state and with partner organizations at the 2019 Colorado Immigrant Rights Coalition State Assembly in Grand Junction. Meanwhile, our team evaluated workplace justice claims for over 450 individual workers, and connected those workers with attorneys or advocates capable of advancing their rights. We also held monthly "TJ Office Hours" where we supported workers submitting wage and hour complaints to the Colorado Department of Labor and Employment. Nationally, our Director David Seligman was a working group member in the Clean Slate Project at Harvard Law School's Labor and Worklife Program, where he focused on proposals to update corporate and antitrust laws to address the erosion of worker bargaining power. David has also continued to consult with organizations and advocates from around the country on state-level reforms to mitigate the harms of forced arbitration, including through whistleblower enforcement mechanisms.

Leading the Wage Theft Task Force

Towards Justice continued to co-chair the Colorado Wage Theft Task Force with El Centro Humanitario in 2019. This group has become a center-place for information-sharing and collaboration among workplace

PROTECT ALL WORKERS ROUNDTABLE

Oct. 22 | 6-7:30 pm | LiUNA 875 Elati St. Denver
Free Admission, Translation, Food, & Childcare

Join workers, advocates, and community members for a night of discussion and story sharing as we encourage the Colorado Department of Labor and Employment to improve the Wage Order and protect all Colorado workers right to rest breaks and overtime pay.

Find more information at bit.ly/coroundtable

SPONSORING GROUPS





justice advocates, unions, and enforcers across our state. This year we were grateful to learn about advocacy initiatives at the state and local level from our Task Force partners, including the local minimum wage effort, state family and medical leave, creation of wage theft as a felony, and a local wage bond initiative. Hearing from the Denver Police Department and the Denver District Attorney's Office about implementation of the new felony wage theft law was a highlight. We also learned about revising the Colorado Minimum Wage Order and dug into research about the profile of wage theft victims in our state. We are grateful to all of our colleagues on the Wage Theft Task Force and particularly to El Centro and other members of our Task Force Planning Committee, Bob Norris and Iris Halpern.

APPRECIATING OUR TEAM

Towards Justice couldn't do this amazing work without the support of our community. You have supported us financially, offered us ideas and advice, and perhaps most importantly, believed that we could change the world. Although the pace of change is eternally unsatisfying, with your help we are bending the arc of history towards justice. Thank you.

Thank You Team!

In 2019 we welcomed Juno Turner as our new Director of Litigation. Juno has proven to be not only an extraordinary lawyer, but also a strategic thinker passionate about attacking injustice that victimizes the most marginalized workers in our society. We also welcomed back former Summer Law Clerk Brianne Power, who rejoined our office as a Staff Attorney, and former Deputy Director Lindsay Fallon, who rejoined our office as a Strategic Advisor. We were grateful for the work of Harvard Legal Fellow Catherine Ordonez, Summer Law Clerks Victoria Guzman and Grace Garbee, Summer Intern Craine Friedman, and MSW Associate Kelly Reeves.

Our Board and Staff

Full-Time Staff

Alexander Hood, Esq., Attorney
Jesus Loayza, Outreach & Intake Coordinator
Catherine Ordonez, Esq., Attorney
Brianne Power, Esq., Attorney
Deborah Schaffer, Investigator & Analyst
David Seligman, Esq., Director
Juno Turner, Esq., Litigation Director



Part-Time Staff

Nina DiSalvo, Esq., Strategic Advisor
Lindsay Fallon, Strategic Advisor
Andy Schmidt, Esq., Of Counsel

Temporary Staff

Julia Maisto, MSW Associate
Kelly Reeves, MSW Associate

Crane Freidman, Summer Intern
Victoria Guzman, Summer Law Clerk
Grace Garbee, Summer Law Clerk

Our Board

Barry Baer, Treasurer
Nina DiSalvo, Director
Brian Gonzales, Director
David Lopez, Director
Camila Palmer, Secretary
Jeff Williams, President

Thank You Cooperating Attorneys and Firms!

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HKM Employment Attorneys, LLP
Ramos Law
Law Office of David Lichtenstein
The Sawaya Law Firm
Dipak Patel

Dunia Dickey
Albrechta & Albrechta, LLC
Gary Kramer
Swain Law, LLC
Forester Haynie
The Law Office of John R. Crone, LLC
Justin Plaskov of Lohf Shaiman Jacobs Heyman & Feiger PC
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