Deportations Frustrate Enforcement of Labor Laws

Plaintiffs' lawyers say it is difficult to track down immigrants who have won settlements.

By Catherine Ho
Daily Journal Staff Writer

LOS ANGELES — For six years, Hugo Alcantar Fernandez worked 14 hours a day welding plastics on the factory floor of a Southern California lab equipment manufacturer.

He says the extra hours never translated into overtime pay. Fernandez, 28, claims he and dozens of other Latino noncitizen, immigrant workers were singled out because of their race, and swept into the lower rung of a two tier pay system — allegations that form the backbone of a recent lawsuit filed against Fullerton-based Terra Universal over now-common discrimination and wage-and-hour complaints. *Morales v. Terra Universal Inc.*, George Sadaghiani, CV10-6490 PA(SSx) (C.D. Cal., filed Aug. 31, 2010).

Except Fernandez is hardly the average plaintiff. He and 42 other Terra workers were detained in June, when federal immigration agents raided Terra facilities, and now face deportation.

That unusual situation highlights the clash between two competing sets of legal protections that employers and employees are attempting to navigate — labor laws that protect all workers, regardless of status, and immigration law that could leave the same workers vulnerable to deportation if they bring claims against their employer. The resulting confusion also impacts labor lawyers who represent immigrant workers but often can't find their clients once a settlement is reached.

The Terra case, filed in U.S. District Court for the Central District of California late last month, comes at a time when the U.S. Department of Labor is encouraging workers to learn their rights — a message that some say is at odds with immigration raids targeting undocumented workers that are happening in the highest numbers since 2005, according to a study released by Syracuse University in July. The 4,145 immigrationprosecutions referred by Immigration and Customs Enforcement, or ICE, in March and April 2010 are the highest recorded numbers since the creation of ICE, the study said.

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>
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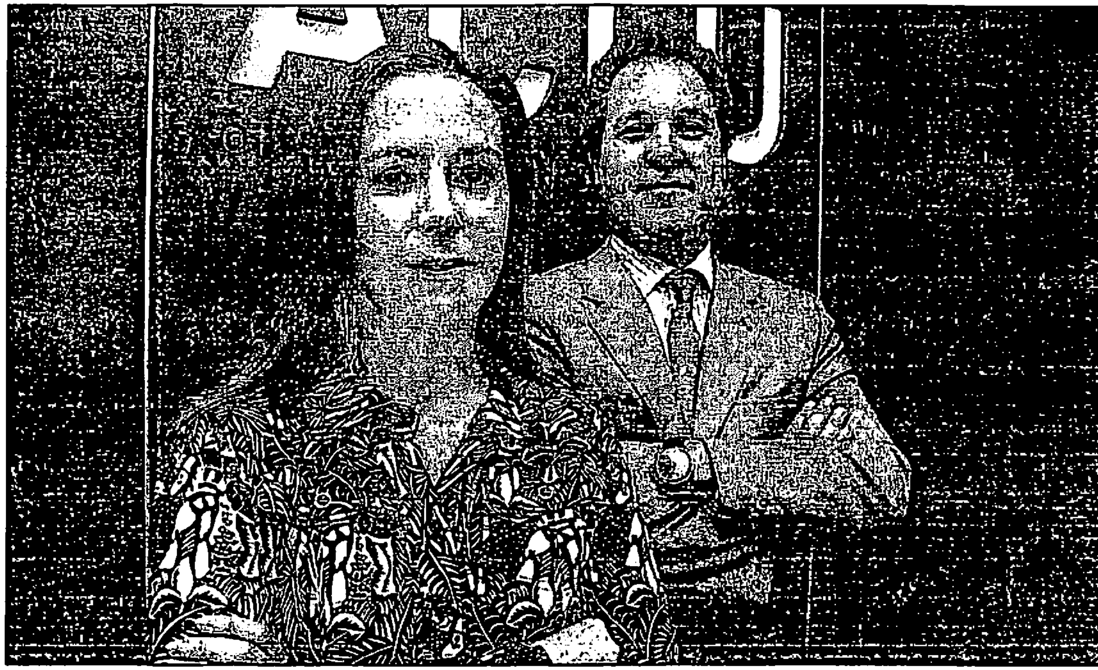
> COO OF TERRA UNIVERSAL

"The message this case sends to workers now is: If you report those violations, you could very well be deported," said Jennifer Pasquarella, an attorney with the American Civil Liberties Union of Southern California, which represents Fernandez and the workers. "That runs counter to the [Department of Labor's] mission and mandate."

The case against Terra centers around disputes now common to many Southern California employment lawyers and their clients.

Workers were made to clock out after eight hours and clock back in for a "second shift" but were not compensated for overtime, according to the complaint that alleges only undocumented workers were asked to do so.



Susan McRae / Daily Journal

Jennifer Pasquarella, of the ACLU of Southern California, and Randy Renick, of Hadsell Stormer Keeny Richardson & Renick in Pasadena

Ken Harms, chief operating officer of Terra, said Thursday that the company is investigating the allegations.

"I'm very sad that some employees feel dissatisfied," Harms said. "There are all kinds of rumors... at this stage, we're going to investigate these and make them right if there's anything wrong there."

Terra's attorney, Robert Gerard of Friedman Stroffe & Gerard in Irvine, said there are "several things in the complaint that are inflammatory that unequivocally are not true," but declined to elaborate on the specifics. No response to the complaint has been filed.

The recovery sought by workers — unpaid wages going back 10 years or more, for a class of at least 300 — could rack up millions of dollars in damages, ACLU lawyers said.

Even if a federal judge were to certify the class and allow the case to move forward, or if a settlement were reached, there is no guarantee that plaintiffs would be reachable.

Plaintiffs leaving the country — because they were deported, voluntarily returned to their hometowns after temporary work visas expire, or any other reason — complicates the process of getting them compensated for unpaid wages.

Centro de los Derechos del Migrante, a non-profit legal organization founded in 2005 by U.S. lawyers, aims to do just this. Each year, the Mexico-based center for migrant rights tracks down hundreds of workers from 23 states in Mexico, from Durango to as far south as Vera Cruz and Oaxaca.

But the region is huge and, in rural communities, limited phone and Internet access and unreliable mail delivery services mean sometimes workers who are entitled to compensation from an employer may simply never see that money. Depending on the terms of the settlement that money may go to the state after a certain number of years or even back to the employer if it goes unclaimed for long enough, said Rachel Micah-Jones, executive director of Centro de los Derechos del Migrante.

In 2005, after reaching a $22.4 million settlement with Albertson's, Ralphs and other supermarkets over allegations they shorted contract janitorial workers on overtime pay, lawyers with Hadsell Stormer Keeny Richardson & Renick spent months knocking on doors in Pueblo, Mexico, to notify class members who'd since moved to put in claims for their share of the settlement.

The problem of plaintiffs moving is not uncommon, especially among low-wage or migrant workers who relocate often to find jobs, said Randy Renick, a partner at Hadsell Stormer in Pasadena and co-counsel for the plaintiffs in the Terra suit.

"The nature of the hourly workforce is that the employees move a lot," he said. "Homeowners like middle upper-class folks tend to stay put. Working class folks oftentimes have to move and it can be a complicated process to keep track of class members."

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