ICE Settles Retaliatory Deportation Suit With Activists

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U.S. Immigration and Customs Enforcement reached a deal with Vermont based-immigration activists Wednesday, ending two years of litigation over claims the agency targeted them for surveillance and deportation because of their advocacy work.

According to the settlement, ICE agreed to halt efforts to deport the labor organizers, granting them deferred action for five years and the ability to apply for work authorization. The agency will also pay $100,000 to be split between the three activists and their organization, Migrant Justice, and will recirculate a memorandum on First Amendment protections among its staff.

While ICE did not acknowledge any wrongdoing in the settlement, attorneys for Migrant Justice and Victor Diaz, one of the activists named in the suit, expressed vindication in a statement Tuesday.

"With this settlement, we have shown that we won't back down in the face of ICE's abuses. They have tried to silence us by terrorizing our community and targeting our leaders, but we are here today to say that we will not be silenced," Diaz said.

Migrant Justice, which advocates for economic empowerment and human rights on behalf of farmworkers, has participated in a number of high-profile campaigns, including a 2011 push to include unauthorized immigrants in Vermont's universal health care program, 2013 legislation allowing them to obtain state driver's licenses and a 2017 social responsibility agreement with Ben & Jerry's.
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Diaz, along with fellow Migrant Justice activists Jose Enrique Balcazar and Zully Palacios, launched their suit in 2018 alleging that ICE, aided by information provided by officials from Vermont's Department of Motor Vehicles, was targeting immigrant activists for removal. The group reached a separate settlement with the DMV in January.

The group claimed that ICE infiltrated private Migrant Justice meetings, "chilling" members' freedom of speech. The complaint also said several members had been arrested and detained, including some who were riding as passengers in cars that were pulled over, despite not having criminal histories or other traits that would make them high Department of Homeland Security enforcement priorities.

ICE defended its enforcement activities saying it had "an obligation to pursue a case against anyone claiming to be breaking our nation's immigration laws" and that no class of removable aliens was exempt from potential enforcement, but denied violating the activists' civil liberties, in a statement to Law360 Wednesday.

"The agency disputes the notion that the 1st Amendment rights of these individuals were violated. ICE does not target unlawfully present aliens for arrest based on advocacy positions they hold or in retaliation for critical comments they make," an ICE spokesperson said.

While the settlement laid the activists' claims to rest and gave them a reprieve from removal, both sides remained steadfast in their arguments after the settlement was signed.

Lia Ernst, a senior staff attorney at the ACLU of Vermont, which represented the activists, told Law360 that "although ICE tried to silence them, Migrant Justice only grew stronger" in a statement, adding that she was "incredibly honored to have represented such courageous and persistent clients."

"We hope that this settlement will give heart and hope to the many other advocates and activists who have also faced ICE's retaliatory action. We know that the fight does not and cannot stop now — here in Vermont and around the country," Ernst said.

Earlier this month the U.S. Supreme Court revived the government's efforts to deport New York-based immigration activist Ravi Ragbir, reversing an appeals court decision from 2019 that found ICE had illegally retaliated against him for his outspoken opposition to the agency.

Days later, a federal judge kept alive a suit from a pair of advocacy organizations in Washington state that claim the leader of one of the groups, La Resistencia, was similarly targeted for deportation based on her activism.

Sejal Zota, legal director of Just Futures Law, which represents the Washington groups, said her team was "thrilled" to see Migrant Justice reach a deal.

"Today's settlement agreement sends a message that everyone has the fundamental right to free speech and political protest and that no one should be retaliated against for exercising those rights," Zota told Law360 in a statement.

Migrant Justice is represented by James M. Diaz and Lia Ernst of the ACLU Foundation of Vermont, Claudia Wilner, Marc Cohan and Sarah Kim Pak of the National Center for Law and Economic Justice, Angelo Guisado, Ghita Schwarz and Guadalupe Aguirre of the Center for Constitutional Rights, Trudy S. Rebert and Joshua Stehlik

Dinesh McCoy
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of the National Immigration Law Center, and Joel M. Cohen, Amanda Aycock and Jaclyn Neely of Gibson Dunn & Crutcher LLP.

The government is represented by Rachel Balaban and Alex Weinberg of the U.S. Attorney's Office for the Eastern District of New York and Owen C.J. Foster of the U.S. Attorney's Office for the District of Vermont.

The case is Migrant Justice et al. v. Wold et al., case number 5:18-cv-00192, in the U.S. District Court for the District of Vermont.

--Additional reporting by Suzanne Monyak. Editing by Jack Karp.