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EMPLOYMENT LAW — FAIR LABOR STANDARDS ACT — FOURTH  
CIRCUIT HOLDS THAT DETAINED IMMIGRANT WORKERS ARE  
NOT “EMPLOYEES” UNDER THE FAIR LABOR STANDARDS ACT. —  
*Ndambi v. CoreCivic, Inc.*, 990 F.3d 369 (4th Cir. 2021).

Over three decades ago, the Fifth Circuit held in *Alvarado Guevara v. INS*<sup>1</sup> that detained immigrants who worked for pay at a government processing facility did not qualify as “employees” under the Fair Labor Standards Act<sup>2</sup> (FLSA) and were therefore not entitled to the law’s minimum wage protections.<sup>3</sup> Central to the court’s holding was the notion that the FLSA contemplated the welfare of “the worker *in American industry*,” an economic context that immigrant detainees were “removed from.”<sup>4</sup> But since that decision, the system of immigration detention in the United States has changed significantly — ballooning in scale while becoming increasingly privatized and ever more profitable.<sup>5</sup> In light of this modern economic reality, new lawsuits brought by former detainee workers revitalized challenges against detention-facility compensation policies.<sup>6</sup> Recently, however, in *Ndambi v. CoreCivic, Inc.*<sup>7</sup> — the first case since *Alvarado Guevara* to squarely address whether the FLSA applies to detained immigrant workers — the Fourth Circuit stood pat, reasoning, along lines similar to those of the Fifth Circuit over thirty years ago, that detainee workers exist outside of the “traditional employment paradigm” envisioned by Congress when it enacted the FLSA.<sup>8</sup> The *Ndambi* court framed its ruling as faithful to decades of FLSA jurisprudence, giving insufficient regard to the notion that the modern context of *Ndambi* warranted a departure from seemingly settled case law. It accordingly failed to consider how Congress’s long-standing interest in protecting not only workers, but also American industry itself, justified an alternative holding sensitive to the largely privatized and for-profit character of immigration detention today.

Desmond Ndambi, Mbah Emmanuel Abi, and Nkemtoh Moses Awombang are members of an English-speaking minority in

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<sup>1</sup> 902 F.2d 394 (5th Cir. 1990) (per curiam).

<sup>2</sup> 29 U.S.C. §§ 201–219.

<sup>3</sup> See *Alvarado Guevara*, 902 F.2d at 395–96.

<sup>4</sup> *Id.* at 396 (emphasis added).

<sup>5</sup> For a more detailed account of the development of the for-profit immigration-detention industry, see generally SHARITA GRUBERG, CTR. FOR AM. PROGRESS, HOW FOR-PROFIT COMPANIES ARE DRIVING IMMIGRATION DETENTION POLICIES (2015), <https://cf.americanprogress.org/wp-content/uploads/2015/12/ForProfitDetention-briefDec.pdf> [<https://perma.cc/YU3W-WRZ5>].

<sup>6</sup> For challenges brought against for-profit detention facilities alleging violations of state minimum wage laws, see, for example, *Washington v. GEO Group, Inc.*, 283 F. Supp. 3d 967 (W.D. Wash. 2017); and *Chao Chen v. GEO Group, Inc.*, 287 F. Supp. 3d 1158 (W.D. Wash. 2017).

<sup>7</sup> 990 F.3d 369 (4th Cir. 2021).

<sup>8</sup> *Id.* at 372 (quoting *Harker v. State Use Indus.*, 990 F.2d 131, 133 (4th Cir. 1993)).

Cameroon.<sup>9</sup> In 2017, they fled to the United States seeking asylum from alleged torture and political persecution.<sup>10</sup> Pending their asylum proceedings, all three were detained by U.S. Immigration and Customs Enforcement (ICE) at the Cibola County Correctional Center in New Mexico.<sup>11</sup> The facility was owned and managed by CoreCivic, Inc.,<sup>12</sup> one of the largest private corrections contractors in the United States.<sup>13</sup> Per CoreCivic's arrangement with ICE, the complex was required to operate in accordance with ICE's Performance-Based National Detention Standards (PBNDS).<sup>14</sup> These standards stipulated that CoreCivic offer and administer a Voluntary Work Program (VWP) for its detainees.<sup>15</sup> Specifically, CoreCivic was required to provide detainees with the opportunity to work voluntarily during their confinement and to compensate them accordingly.<sup>16</sup> CoreCivic retained the discretion to set its own wage scale — so long as compensation was “at least \$1.00 . . . per day” — and to develop site-specific procedures for selecting program participants.<sup>17</sup>

During their detention, Ndambi, Abi, and Awombang all participated in the facility's VWP, performing tens of hours of janitorial, library, and kitchen work each week.<sup>18</sup> For their labor, the three were compensated between \$1.00 a day and \$15.00 a week, regardless of how many hours they actually worked.<sup>19</sup> These rates were “markedly below the federally- and state-mandated minimum wages for covered employees.”<sup>20</sup> The three used their earnings to purchase in-detention necessities — such as phone calls, toiletries, and food.<sup>21</sup>

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<sup>9</sup> Russell Contreras, *Prison Group Faces Lawsuit over Immigrant Wages*, AP NEWS (Nov. 14, 2018), <https://apnews.com/article/new-mexico-north-america-lawsuits-us-news-immigration-8734b19325584bo2b63f4fc8ff507a62> [<https://perma.cc/P6DN-7GJX>].

<sup>10</sup> *Id.*

<sup>11</sup> *Ndambi*, 990 F.3d at 370.

<sup>12</sup> *Id.*

<sup>13</sup> Jamiles Lartey, *Think Private Prison Companies Are Going Away Under Biden? They Have Other Plans*, MARSHALL PROJECT (Nov. 17, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/11/17/think-private-prison-companies-are-going-away-under-biden-they-have-other-plans> [<https://perma.cc/CE6X-NCMM>].

<sup>14</sup> *Ndambi*, 990 F.3d at 370.

<sup>15</sup> See *id.*; U.S. IMMIGR. & CUSTOMS ENF'T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011, at 405 (rev. ed. 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf> [<https://perma.cc/Y5YF-H8A9>].

<sup>16</sup> U.S. IMMIGR. & CUSTOMS ENF'T, *supra* note 15, at 405–07.

<sup>17</sup> *Id.* at 407; see also *id.* at 406.

<sup>18</sup> See Class Action Complaint at 9–13, *Ndambi v. CoreCivic, Inc.*, 2019 WL 4735428 (D. Md. Sept. 27, 2019) (No. 18-CV-3521).

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

<sup>20</sup> *Ndambi*, 990 F.3d at 370–71. The federal minimum wage is \$7.25 an hour. 29 U.S.C. § 206(a)(1)(C). In 2017, the state minimum wage in New Mexico was \$7.50 an hour. N.M. STAT. ANN. § 50-4-22(A)(1) (West 2021).

<sup>21</sup> Class Action Complaint, *supra* note 18, at 8.

After their release, Ndambi, Abi, and Awombang brought a class action lawsuit in November 2018 against CoreCivic on behalf of themselves and others similarly situated, alleging that the company had violated minimum wage requirements under the FLSA and the New Mexico Minimum Wage Act<sup>22</sup> (NMMWA).<sup>23</sup> Both statutes mandate that employers pay their employees the minimum wage,<sup>24</sup> and both define “employee” broadly as “any individual employed by an employer.”<sup>25</sup> At trial, CoreCivic filed a motion to dismiss for failure to state a claim, arguing that detained immigrant workers were not “employees” and therefore were not entitled to minimum wage compensation.<sup>26</sup>

The United States District Court for the District of Maryland granted CoreCivic’s motion to dismiss,<sup>27</sup> agreeing with CoreCivic that detained immigrant workers were not “employees” subject to either statute’s minimum wage protections.<sup>28</sup> Drawing on Fourth Circuit precedent that held that *prisoners* are not employees under the FLSA, the court concluded that the analogous economic reality of immigrant detainees likewise “d[id] not share commonality with that of a traditional employer-employee relationship.”<sup>29</sup>

The Fourth Circuit affirmed.<sup>30</sup> Writing for a unanimous panel, Judge Wilkinson<sup>31</sup> held that the detainees did not qualify as “employees” under the FLSA because they fell outside of the “traditional employment paradigm.”<sup>32</sup> Judge Wilkinson began by noting that “the Act’s ‘circular’ definition of ‘employee’ . . . [wa]s unhelpful.”<sup>33</sup> He then pointed out that, as a result, courts tasked with ascertaining the statute’s meaning have instead turned to the Act’s “legislative purpose” for interpretive guidance.<sup>34</sup>

Accordingly, Judge Wilkinson posited that “[t]he FLSA was enacted to protect workers who operate within ‘the traditional employment paradigm.’”<sup>35</sup> He then outlined the “crucial differences” that distinguished

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<sup>22</sup> N.M. STAT. ANN. §§ 50-4-21 to -22 (West 2021).

<sup>23</sup> *Ndambi*, 990 F.3d at 371.

<sup>24</sup> See 29 U.S.C. §§ 201-219; N.M. STAT. ANN. §§ 50-4-21 to -22. Given the statutes’ relevant similarities, the Fourth Circuit and both parties agreed that “the NMMWA should be interpreted in accordance with the FLSA.” *Ndambi*, 990 F.3d at 371 n.1.

<sup>25</sup> 29 U.S.C. § 203(e)(1); N.M. STAT. ANN. § 50-4-21.

<sup>26</sup> *Ndambi v. CoreCivic, Inc.*, No. 18-CV-3521, 2019 WL 4735428, at \*1 (D. Md. Sept. 27, 2019).

<sup>27</sup> *Id.* at \*3.

<sup>28</sup> *Id.* at \*2.

<sup>29</sup> *Id.*

<sup>30</sup> *Ndambi*, 990 F.3d at 370.

<sup>31</sup> Judge Wilkinson was joined by Judges Keenan and Diaz.

<sup>32</sup> *Ndambi*, 990 F.3d at 372.

<sup>33</sup> *Id.* (quoting *Harker v. State Use Indus.*, 990 F.2d 131, 133 (4th Cir. 1993)).

<sup>34</sup> *Id.* (citing *Bennett v. Frank*, 395 F.3d 409, 409 (7th Cir. 2005)).

<sup>35</sup> *Id.* (quoting *Harker*, 990 F.2d at 133).

an employer-employee relationship from a detainer-detainee one.<sup>36</sup> Judge Wilkinson first emphasized the significant degree of control and supervision detention facilities exert on detainees — a feature of immigrant detention that makes work performed in that context “simply not comparable to the ‘free labor situation of true employment.’”<sup>37</sup> For example, detainees cannot simply “walk off the job site and look for other work.”<sup>38</sup> In fact, detainees can work “solely at the prerogative” of their custodian.<sup>39</sup> Judge Wilkinson also highlighted that “unlike workers in a free labor market who use their wages to maintain their ‘standard of living’ and ‘general well-being,’”<sup>40</sup> detainees are already entitled to the provision of basic necessities by their custodian.<sup>41</sup> On this line of argument, Judge Wilkinson held that CoreCivic’s failure to provide these basic necessities had no bearing on whether its detainees were entitled to a minimum wage under the FLSA.<sup>42</sup>

Judge Wilkinson then raised additional considerations that counseled against extending FLSA protections to detained immigrant workers. First, Judge Wilkinson cited a slew of cases — including *Alvarado Guevara* — that refused to expand the Act to cover a variety of custodial detention contexts.<sup>43</sup> Second, Judge Wilkinson held that contravening “such a weight of authority” would “create a conflict in a context where uniformity is favored.”<sup>44</sup> Third, Judge Wilkinson rejected the argument that the “private, for-profit nature” of CoreCivic’s enterprise was material to the court’s legal analysis.<sup>45</sup> As he explained, other circuits had previously held that whether detainees qualified as employees did not turn on whether their custodians were public or private entities.<sup>46</sup> Moreover, Judge Wilkinson maintained that “[although] detentions may well have an incidental monetary aspect, their aims” — to ensure that detainees are present during their immigration proceedings — “are not primarily economic ones.”<sup>47</sup> Judge Wilkinson concluded by framing the principle underlying the holding as one of judicial restraint: although *Congress* could rewrite the FLSA to apply to custodial detentions, the *courts* were not free to do so.<sup>48</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* (quoting *Harker*, 990 F.2d at 133).

<sup>38</sup> *Id.* (quoting *Harker*, 990 F.2d at 133).

<sup>39</sup> *Id.* (quoting *Harker*, 990 F.2d at 133).

<sup>40</sup> *Id.* at 373 (quoting 29 U.S.C. § 202(a)).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 373–74 (collecting cases across multiple sister circuits concluding that the FLSA does not extend to prison inmate labor, pretrial detainee labor, or civil detainee labor).

<sup>44</sup> *Id.* at 374.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*; see also *Bennett v. Frank*, 395 F.3d 409, 409 (7th Cir. 2005).

<sup>47</sup> *Ndambi*, 990 F.3d at 374.

<sup>48</sup> See *id.* at 375 (“It is simply not within this court’s authority to amend statutes from the bench.”).

The *Ndambi* court purported to apply well-settled principles governing the interpretation of the FLSA.<sup>49</sup> But its parsimonious reading of the statute stands at odds with the long-standing judicial credo that a *broad* reading of the FLSA's provisions is necessary to effectuate the Act's principal aims.<sup>50</sup> More specifically, despite its purposivist ambitions, the *Ndambi* court ignored how CoreCivic's business model — and its effects on the modern economics of immigration detention — conflicts with the FLSA's express interest in protecting not just *workers*, but *industries* too. Sensitivity to today's largely for-profit and privatized form of immigration detention would have warranted departing from the Fifth Circuit's holding and extending the FLSA's minimum wage protections to detainee workers.

Congress enacted the FLSA with certain core purposes in mind. Most obviously, the Act reflected an interest in promoting worker welfare. The FLSA itself articulates a concern for the “health, efficiency, and general well-being of workers.”<sup>51</sup> And the legislative record corroborates this interest in rebalancing labor markets in favor of classes of workers vulnerable to economic exploitation.<sup>52</sup> But the FLSA also reflected Congress's desire to protect American industry itself. In the FLSA's opening “declaration of policy,” Congress asserts that it seeks to “eliminate” the existence of labor conditions that “constitute[] an unfair method of competition in commerce” and that “lead[] to labor disputes burdening and obstructing commerce.”<sup>53</sup> Materials from the relevant legislative history also confirm Congress's efforts to protect hirers with “good labor standards” from “ruthless” undercutting by “substandard” competitors.<sup>54</sup>

The Fourth Circuit's holding in *Ndambi* conflicts with each of these legislative priorities. For one, CoreCivic's detainee work program amounts to the kind of economic exploitation that the FLSA was enacted to prohibit. Here, the *Ndambi* court's account of the significant control detention facilities exert over their detainees is illustrative.

<sup>49</sup> See *id.* at 374.

<sup>50</sup> See *Mitchell v. Lublin, McGaughy & Assocs.*, 358 U.S. 207, 211 (1959) (“[T]he Act has been construed liberally to apply to the furthest reaches consistent with congressional direction.”).

<sup>51</sup> 29 U.S.C. § 202(a).

<sup>52</sup> See 81 CONG. REC. 7800 (1937) (statement of Sen. David I. Walsh) (“The purpose and intent of the [FLSA] is that the poorest, the lowest, the humblest wage earner in this country shall not be left helpless . . . .”); see also *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706 (1945) (noting that the FLSA's “legislative history . . . shows an intent on the part of Congress to protect certain groups of the population from sub-standard wages” and to abate the “unequal bargaining power as between employer and employee”).

<sup>53</sup> 29 U.S.C. § 202(a)–(b).

<sup>54</sup> 81 CONG. REC. 7780 (1937) (statement of Sen. David I. Walsh); see also Seth D. Harris, *Conceptions of Fairness and the Fair Labor Standards Act*, 18 HOFSTRA LAB. & EMP. L.J. 19, 123–48 (2000) (combing through the legislative record of the FLSA and concluding that “th[e] very fear of cutthroat price competition inspired the defeat of [alternative] version[s] of the FLSA,” *id.* at 144).

Much like labor markets where a single employer wields monopsonistic buying power, the immigration-detention context is marked by a pronounced market asymmetry that disadvantages detainee workers.<sup>55</sup> After all, as the *Ndambi* court correctly observed, detainees are not at liberty to seek out more competitive wages by shopping around for other hirers.<sup>56</sup> This extreme inequality in bargaining power reflects a labor-market dynamic that the FLSA was supposed to help rectify.<sup>57</sup>

But CoreCivic's conduct goes beyond just harming worker welfare. Its business strategy of paying its detainee workers subminimum wages also constitutes a method of competitive undercutting that the FLSA was designed to bar. Consider the following hypothetical where all detention-facility contractors initially pay their workers the federal minimum wage. If CoreCivic is allowed to break from this industry standard and insource work to its detainees for a dollar per day, then CoreCivic — all else being equal — is at an economic advantage relative to competition that pays workers the minimum wage. CoreCivic's substandard wage allows it to slash labor costs, enabling it to bid for federal contracts, build detention complexes, and house detainees at a much lower price than its competitors can.<sup>58</sup> As a result, other detention-services contractors have an incentive to likewise insource labor to their own detainees in order to remain economically competitive. But this ensuing "race to the bottom" behavior was exactly the kind of industry phenomenon that the FLSA's wage floor was enacted to preclude.<sup>59</sup>

Moreover, CoreCivic's detainee compensation policy frustrates the FLSA's objective of eliminating labor conditions likely to trigger disruptive labor disputes. Recently, detained immigrant workers have staged hunger strikes and work stoppages in protest of detention-facility conditions, including detainee compensation policies.<sup>60</sup> These labor protests not only disturb the internal functioning of these facilities, but also obstruct commercial activity within the industry by burdening the economic health of the private contractors tasked with operating them.

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<sup>55</sup> See José Azar et al., *Labor Market Concentration*, J. HUM. RES., May 12, 2020, at 1, 2 (documenting "a negative correlation between labor market concentration and average posted wages in that market").

<sup>56</sup> See *Ndambi*, 990 F.3d at 372.

<sup>57</sup> See sources cited *supra* note 52.

<sup>58</sup> See Jacqueline Stevens, *One Dollar Per Day: The Slaving Wages of Immigration Jail, From 1943 to Present*, 29 GEO. IMMIGR. L.J. 391, 402 (2015) (describing the "hundreds of millions of dollars" of extra profits detention facilities are generating by failing to pay the federally mandated minimum wage).

<sup>59</sup> See sources cited *supra* notes 53–54; cf. *Miller v. Dukakis*, 961 F.2d 7, 9 (1st Cir. 1992) (per curiam) (holding that inmates of a state treatment center were not entitled to FLSA minimum wage protections in part because the center "[d]id not operate in the marketplace and ha[d] no business competitors").

<sup>60</sup> See, e.g., Ian Urbina, *Using Jailed Migrants as a Pool of Cheap Labor*, N.Y. TIMES (May 24, 2014), <https://www.nytimes.com/2014/05/25/us/using-jailed-migrants-as-a-pool-of-cheap-labor.html> [<https://perma.cc/2JK5-XVEM>].

Compelling CoreCivic to pay its detainee workers the minimum wage would not, for good reason, entirely quell internal detainee protests. But the labor strikes that have emerged as a result of CoreCivic's failure to compensate its workers at standard rates represent the kinds of disputes that the FLSA's minimum wage provisions were enacted to address.

To be sure, any discussion of these policy interests was conspicuously absent when the Fifth Circuit refused to extend FLSA protections to detainee workers in *Alvarado Guevara* over thirty years ago.<sup>61</sup> In that respect, the *Ndambi* holding represents a continuity in the law. But the relevant economic context since *Alvarado Guevara* has dramatically changed. When *Alvarado Guevara* was decided, privately run detention operations were rare.<sup>62</sup> Indeed, even in 2002, private facilities housed less than ten percent of all ICE detainees.<sup>63</sup> Today, however, private operators control the vast majority — nearly three-fourths — of the country's immigration-detention beds.<sup>64</sup>

That shift throws into sharp relief the tension between the decision in *Ndambi* and the industry-protective policy interests underlying the FLSA. The predominantly privatized, for-profit nature of immigration detention today makes the system more amenable to market competition,<sup>65</sup> and therefore more vulnerable to competitive undercutting. And detainee labor disputes now endanger not only internal facility operations, but also the financial stability of a multibillion-dollar slice of the American economy.<sup>66</sup> As a result, judicial efforts to distinguish the vulnerable "industry" laborer from the exploited "detention" worker now read as antiquated, given that the immigration-detention system has taken shape as a profitable industry itself.

Indeed, whatever effort the Fourth Circuit made to engage with the novel circumstances presented by *Ndambi* was cursory and rested on poor legal reasoning. First, the *Ndambi* court posited that the "for-

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<sup>61</sup> See *Alvarado Guevara v. INS*, 902 F.2d 394, 396 (5th Cir. 1990) (per curiam) (invoking the "legislative purpose of the FLSA" without expressly considering the particular prongs contained in the Act's declaration of policy).

<sup>62</sup> See GRUBERG, *supra* note 5, at 2.

<sup>63</sup> See PAIGE M. HARRISON & ALLEN J. BECK, U.S. DEP'T OF JUST., NCJ 200248, PRISONERS IN 2002, at 8 (2003).

<sup>64</sup> See Clyde Haberman, *For Private Prisons, Detaining Immigrants Is Big Business*, N.Y. TIMES: RETRO REPORT (Oct. 1, 2018), <https://www.nytimes.com/2018/10/01/us/prisons-immigration-detention.html> [<https://perma.cc/3P39-RCLC>].

<sup>65</sup> This fact holds even if the *magnitude* of those competitive dynamics in practice — as in many industries — is minimal. See Livia Luan, *Profiling from Enforcement: The Role of Private Prisons in U.S. Immigration Detention*, ONLINE J. MIGRATION POL'Y INST. (May 2, 2018), <https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention> [<https://perma.cc/N2DK-5N32>].

<sup>66</sup> See Danielle C. Jefferis, *Constitutionally Unaccountable: Privatized Immigration Detention*, 95 IND. L.J. 145, 163–64 (2020).

profit, private” nature of CoreCivic’s operations was not dispositive.<sup>67</sup> But that argument addresses only a small part of the contemporary economic picture, failing to consider the “for-profit, private” nature of the immigration-detention system itself. Second, the *Ndami* court emphasized that the aim of detention, although it has “an incidental monetary aspect,” is “not primarily economic.”<sup>68</sup> However, as other commentators have noted, taken to its extreme, this reasoning would effectively exclude workers in most industries from the aegis of the FLSA.<sup>69</sup> For example, as the logic goes: although bakeries may well have an incidental monetary aspect, their aims — to sate people’s appetites for delicious cakes and pastries — are not primarily economic ones. Third, the *Ndami* court suggested that because the FLSA expressly contemplates maintaining the “standard of living” and “general well-being” of workers, its provisions do not extend to detainees already entitled to basic necessities from their custodians.<sup>70</sup> But a worker’s preexisting entitlement to certain basic subsistence needs does not necessarily absolve hiring entities from complying with the FLSA.<sup>71</sup> For example, the FLSA contains no provision categorically exempting parents who employ their children from the Act’s minimum wage requirements.<sup>72</sup>

*Ndami* presented the Fourth Circuit with an opportunity to account for the modern form of immigration detention and regulate a business model that runs afoul of the FLSA’s core priorities. Compelling detention-services contractors like CoreCivic to pay their detained immigrant workers a minimum wage would have done much to effectuate not only the worker-protective aims of the FLSA, but also the industry-protective ambitions of the statute.

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<sup>67</sup> *Ndami*, 990 F.3d at 374.

<sup>68</sup> *Id.*

<sup>69</sup> See, e.g., Stevens, *supra* note 58, at 480–81.

<sup>70</sup> *Ndami*, 990 F.3d at 373 (quoting 29 U.S.C. § 202(a)). Other courts refusing to apply the FLSA to the custodial context have advanced similar arguments. See, e.g., *Bennett v. Frank*, 395 F.3d 409, 410 (7th Cir. 2005).

<sup>71</sup> See Seth H. Garfinkel, Note, *The Voluntary Work Program: Expanding Labor Laws to Protect Detained Immigrant Workers*, 67 CASE W. RESV. L. REV. 1287, 1317–21 (2017) (noting how patient-workers and live-in domestic-service workers, who also “retain their basic living needs from their employer . . . still receive minimum wage protections under the FLSA,” *id.* at 1317).

<sup>72</sup> See 29 U.S.C. §§ 206, 213(a).