

HOT LIST

PRO BONO

A SPECIAL REPORT

Case changed immigration enforcement policy

Besides a monetary recovery, profiling action forced the government to prioritize public safety.

BY LEIGHANNE MANWARREN

The case began with a sting operation run by the Danbury, Conn., Police Department and U.S. Immigration and Customs Enforcement agents. On Sept. 19, 2006, an undercover police officer posed as a contractor and offered work to day laborers gathered at a roadside. He then drove them to a spot where the federal agents waited; from there, they were sent to deportation facilities.

It ended in March 2011, when a judge signed off on a civil rights settlement requiring the city and federal governments to pay \$650,000 to eight day laborers. It was one of the first rulings concerning police dealings with suspected undocumented immigrants, and the

largest financial settlement yet reached in an illegal profiling case, according to Gibson, Dunn & Crutcher partner Joel Cohen, who collaborated on the case with Yale Law School professor Michael Wishnie and Yale's Jerome Frank Legal Clinic.

What's more, immigration enforcement authorities agreed to focus enforcement efforts on cases involving national security, public safety and border security.

When talking about the case, Cohen sounds personally offended. "They were arrested and were mistreated by virtue of how they looked and appeared, not by virtue of anything they did," he said. "Law enforcement decided with collaboration with the mayor of

Danbury, who is known to have a very anti-immigrant viewpoint of the world, that they should go and round up people who might look like illegal immigrants or day laborers from the center of Danbury, Conn., as a political ploy."

At first, "it was presented to me as an opportunity to collaborate with professor Mike Wishnie," Cohen said. Cohen was practicing at Clifford Chance at the time but would retain the case when he moved to Gibson Dunn in 2009.

Wishnie "suggested to me, while the case was in the early stages but was heading toward discovery, that we marry our two teams," Cohen said. "We could help them handle litigation and bring it to a successful conclusion."

Wishnie was starting his first semester

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PROFILING: Gibson Dunn's Joel Cohen initially was intrigued by the chance to work with Michael Wishnie of Yale Law School, who said, "This was a huge undertaking, and they didn't blink."

teaching at Yale Law School when community leaders approached him about the arrests. "We didn't find the case; the case found us," he said.

Wishnie and his students started building their case by filing state and federal Freedom of Information Act requests. They filed a civil rights complaint in fall 2007. A federal trial judge refused government motions to dismiss in spring 2008.

Among the difficulties the attorneys faced were that most of the plaintiffs did not speak English well and offered dif-

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ferent recollections of what happened that day, Cohen said.

“We fought very hard to keep their immigration status out of this case, because it was not relevant to the claims,” Cohen said. “Our contention always was—and the court agreed with us—that whatever their status may be, whether it be vis-à-vis immigration or citizenship or residency or the right to be in this country, it is irrelevant to whether they were illegally profiled. Illegal profiling is illegal profiling, no matter who it is done against.”

DISCOVERY RESISTANCE

The case dragged as the defense fought demands for documents involved in the sting operation, Cohen said—he and his team eventually clocked in more than 9,000 pro bono hours over four years. Meanwhile, the clients wondered why the case was taking so long.

“We had a group of Spanish-speaking associates who became quite close to our clients, and part of the challenge was trying to explain to them why the wheels of justice move so slowly in the United States,” Cohen said.

At the same time, anti-immigration sentiment was producing legislative crackdowns on undocumented immigrants in Arizona and other states. In that climate, the case attracted national attention. “This was the very first challenge, so we had a lot of people keeping a close eye on the proceedings,” Wishnie said.

The next step is to ensure the plaintiffs are allowed to stay in this country. The Yale clinic in September asked federal authorities to halt deportation proceedings against the men.

While awaiting the outcome of that effort, the team has been enjoying its victory.

“This was a very large case and we were thrilled that Joel and the firm could take it on,” Wishnie said. “When I asked Joel to take this on, he fully understood the enormous commitment of resources. This was a huge undertaking, and they didn't blink; from day one they fully committed to the clients and the case.”

LeighAnne Manwarren was an intern for The National Law Journal.