

Edition

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Protecting Migrant Rights Across Borders

**Challenges in Transnational Litigation:
Representing Absentee Migrant Workers in U.S. Courts**

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JUSTICE IN MOTION

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Representing Absentee Migrant Workers in
U.S. Courts**

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789 Washington Avenue
Brooklyn, NY 11238
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Praise for previous editions

“The manual is an invaluable and essential reference for anyone representing clients based outside the United States, and especially citizens of Mexico and Guatemala. It addresses the many hurdles involved in arranging for testimony from foreign-based clients, either through travel to the U.S. for live appearances at deposition or trial, or through depositions conducted abroad. Included is an exhaustive review of the case law relating to these matters. As a long-time practitioner representing foreign clients, I have found the manual unquestionably the most comprehensive reference on the procedural challenges involved in representing low-wage workers residing outside the United States. The relevant statutes, regulations and case decisions are at your fingertips, along with helpful practical tips.”

– *Gregory Schell*

“This publication continues to be a tremendous asset for attorneys representing transnational migrant workers. It is thoughtful, thorough, and the only resource like it that I know of. It will certainly remain within easy reach on my desk and I suspect on the desks of many public interest attorneys across the country.”

– *Daniel Werner*

“The fourth edition of the Challenges in Transnational Litigation manual was an invaluable resource to me as I prepared for a hearing on a motion to conduct depositions abroad or by videoconference.”

- *Dave Moulton*

“This manual is the Rosetta Stone for lawyers representing H-2 workers in litigation in U.S. courts. If you represent transnational low-wage workers with employment claims and you're not using this manual, you should start now.”

- *Douglas Stevick*

“The Challenges in Transnational Litigation Manual is, as we say in Maine, wicked helpful.”

- *Mike Guare*

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We are grateful to the MacArthur Foundation, Public Welfare Foundation, and General Service Foundation for sustaining Justice In Motion's legal work. Special thanks to the Southern Poverty Law Center for providing financial support for this 5th edition manual's printing.

About Justice in Motion

Justice in Motion, formerly known as Global Workers Justice Alliance (“Global Workers”), was founded in 2005 as a New York-based NGO that safeguards the rights of international migrants who have experienced exploitation in the United States and who have returned home. The theoretical framework motivating this work is *portable justice*: the right and ability of transnational migrants to access justice in their countries of employment even after returning to their countries of origin. Portable justice is critical to achieving justice for today’s global migrants.

One of Justice in Motion’s core programs is the maintenance of the Defender Network. The Defender Network is comprised of over 30 carefully selected and experienced human rights advocates in Mexico, Guatemala, Honduras, El Salvador, and Nicaragua. Members of the Defender Network: (1) educate migrants about their labor rights before migrating; (2) receive complaints from migrants who have suffered exploitation in the U.S. or Canada; (3) serve as a liaison to U.S. and Canadian lawyers in concrete cases brought for migrants who have returned to their countries of origin; (4) address violations that migrants face in the country of origin related to work in the U.S. or Canada; and (5) advocate for improving conditions causing migration and underlying vulnerabilities to labor exploitation.

Justice in Motion provides members of the Defender Network with ongoing training on U.S. and Canadian substantive and procedural laws in order to be effective on-the-ground support that lawyers need to keep cases moving throughout the litigation process. As cultural insiders, Defenders effectively maneuver to get work done and provide a trusted link to migrant clients. Through work on U.S. and Canadian cases, Defenders develop greater capacity to serve migrants by not only seeking justice for harm suffered but also advocating for change in the migrants’ home communities. Justice in Motion’s transnational model is practical, sustainable, and truly a grassroots approach to alleviating the rampant abuse endured by foreign migrants who work in the U.S. and Canada.

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Foreword

Dear Colleagues:

How do we ensure that migrants, no matter where they go, have their day in court for abuses suffered while working in the United States?

The idea for this manual came to me after discussing transnational litigation challenges at the National Farmworker Law Conference ten years ago. Since that time, Justice in Motion has endeavored to craft a useful tool for all advocates who litigate on behalf of today's mobile workforce. Currently, migrants dominate the low-wage employment sector in the United States, not just in agriculture. The number of migrants who may return home – whether by force or choice – before their claims resolve is growing. While Justice in Motion has timed the publication of each update to this manual in conjunction with the biannual farmworker law conference, advocates for migrants who work in industries outside of agriculture continue to benefit from this manual. We encourage sharing this resource with worker-side colleagues to widen the circle of advocates able to represent transnational migrants.

What follows is a broad sketch of salient issues frequently arising when representing migrant workers who leave the United States. It is not meant to be an exhaustive overview but rather is intended to provide the basics and then motivate a creative approach by in-depth consideration of some key practical developments. It is divided into five parts: returning to the United States to testify in litigation or for medical treatment, discovery, trial, special issues with workers' compensation claims, and abuses on foreign soil. Each section flags important legal and logistical challenges and offers practical suggestions based on existing regulations and case law.

We are proud to release the fifth edition of this manual. Since its first publication in 2008, Justice in Motion has continued to track common transnational litigation issues and monitor their resolution. The jurisprudence relating to transnational migrants' access to portable justice has developed tremendously in the last eight years due to the tenacious and imaginative advocacy of the many lawyers, paralegals, and community outreach staff who have dedicated their careers to serve the public interest, often at great personal sacrifice, and their willingness to share their stories. The team at Justice in Motion is thankful for your work for migrant clients and looks forward to continuing close collaboration in the future!

In Solidarity,



Cathleen Caron
Founder and Executive Director
Justice in Motion

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