

No rights for migrant workers

■ IMMIGRATION REFORM BACKFIRES

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When Senator Alan Simpson introduced his immigration reform bill on March 17, 1982, he called it a solution to "one of the greatest threats to the future of this country." The threat, according to Simpson, was "uncontrolled immigration," the illegal entry of hundreds of thousands of Third World people into this country each year. Citing immigrant fertility rates and expressing his fear of "cultural separatism," Simpson described the alien population as a demographic time bomb that threatens to harm "American values, traditions, institutions and . . . our way of life."

Four years and several revisions later, Simpson's bill became law, the Immigration Reform and Control Act of 1986 (IRCA). In the past year more than 1.8 million applied for amnesty through the law's legalization program, which ended in May and which had granted temporary resident status to undocumented immigrants who could prove continuous residency in the United States since 1981. A punitive and less-publicized element of the law went into effect shortly after the amnesty application period came to a close. This June, agents of the Immigration and Naturalization Service began enforcing legal sanctions designed to discourage employers from hiring undocumented workers. The penalties are stiff: Employers can be fined \$250 per worker on the first offense and up to \$10,000 per worker afterward. "The honeymoon is over," announced Harold Ezell, western regional commissioner of the I.N.S., as the first fines were levied against three Southern California employers. "We intend to show that this law is not a paper tiger."

But despite this new "get-tough" rhetoric, it is becoming clear that far from discouraging employers from hiring illegal immigrant workers, the law may have actually created incentives to hire them. Many immigration attorneys charge that IRCA has stripped most undocumented workers of their rights, in turn creating a new class of immigrants so desperate for work that they will accept increasingly sub-

standard wages and working conditions.

"The new law has been turned into a weapon by unscrupulous employers as a means to withhold paychecks, to deny vacations, to defend against discrimination charges and to refuse to pay the minimum wage and overtime salaries," says José Medina, an attorney at the Instituto Laboral de la Raza, a Latino labor-rights group in San Francisco that handled about fifty cases of immigration-related employment discrimination this year.

Some of the workers in those cases went to the institute after being verbally harassed or physically abused by employers who apparently do not fear retribution because the workers are undocumented, according to Medina. Apparently, both employers and workers recognize that immigrants without papers are in a more vulnerable position than before. Many workers "have gotten the message that they're not entitled to work in this country," Medina says. "Because of that, they believe they don't have any employment rights."

Undocumented workers may, in fact, have even fewer legal rights if a recent Federal court decision is allowed to stand. In May 1987, a court in Alabama ruled that undocumented workers are no longer covered by labor protection laws. In *Patel v. Sumani Corp.*, the case of an East Indian motel worker who sought to recover unpaid wages, the court ruled that an undocumented employee is not an "individual" under the Fair Labor Standards Act and is thus not subject to its protections. The court argued that earlier Federal and Supreme Court decisions protecting the rights of undocumented workers were no longer valid: In passing the Immigration Reform and Control Act, the judge contended, Congress had shown it intended that the undocumented should not have the right to work.

Although *Patel* was overturned by a U.S. Court of Appeals in June, it may be appealed as far as the Supreme Court. The lower-court ruling has already been used as a defense by an employer charged with sex discrimination. Alicia Castrejon, a worker at a tortilla packing plant in central California, filed a complaint with the Equal Employment Opportunity Commission when her employer refused to reinstate her after she took a pregnancy leave. Castrejon's employer argued that because she was undocumented, she was not covered by civil rights laws protecting workers from discrimination. The case will be heard next April.

Bill Tamayo, an Oakland, California, attorney with the Asian Law Caucus, says that *Patel* "flies in the face of Congressional intent. In the legislative history of IRCA, the House Education and Labor Committee stressed that the bill was not intended to alter any of the existing labor laws." Even though the *Patel* decision was overturned, Tamayo says, IRCA's employer sanctions still threaten the rights of undocumented workers who fall under the "grandfather" clause of the immigration law. Those who held their jobs before November 6, 1986, are not required to present papers to their current employers, but, in a Catch-22 irony, they cannot legally work for anyone else. At present, perhaps millions of grandfathered workers are trapped in their current jobs, a captive labor force vulnerable to exploitation by employers.

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"It would certainly be more just to move the legislation cutoff date from 1982 to November 6, 1986," concludes Tamayo. "But no one in Congress wants to revisit the immigration law this year. Congress has not been the most favorable arena to defend civil rights, particularly those of nonwhite people who can't vote."

Tamayo argues that the law also has made it more lucrative for employers to hire the undocumented, since the economic gains of hiring workers no longer protected by the law far outweigh any possible penalties. "It seems that if you deny them labor rights, then you actually tell employers to go ahead and hire the undocumented. You're encouraged to hire them because you don't have to pay the minimum wage and you can deny them all kinds of benefits."

Some Latino organizations caution that the law has already created an anti-immigrant backlash, one in which even the rights of immigrants with work permits are frequently denied. The Mexican American Legal Defense and Education Fund (MALDEF), the Asian Law Caucus and the Instituto Laboral de la Raza all have discovered cases in which those authorized by the I.N.S. to work have been fired or denied jobs by employers worried about complying with the law. "Someone may be fired just because the employer may not want to run the risk," says José Medina of the institute. "They use their own criteria to decide who's eligible to work and who isn't. Sometimes it's the color of the person's skin, or if they have an accent when they speak English."

Some Latino citizens have also suffered from this backlash, according to Beto Juarez, an attorney with MALDEF in Los Angeles. "We've had quite a few complaints from Puerto Rican employees in the Midwest, where employers were presented with valid documents and rejected them," he says. "These employers apparently don't realize that Puerto Ricans are U.S. citizens." Juarez says another common complaint is that employers ask only Latino workers for proof of citizenship, "which is obviously discriminatory."

By August of this year, 201 charges of discrimination against immigrants with work permits had been filed with the

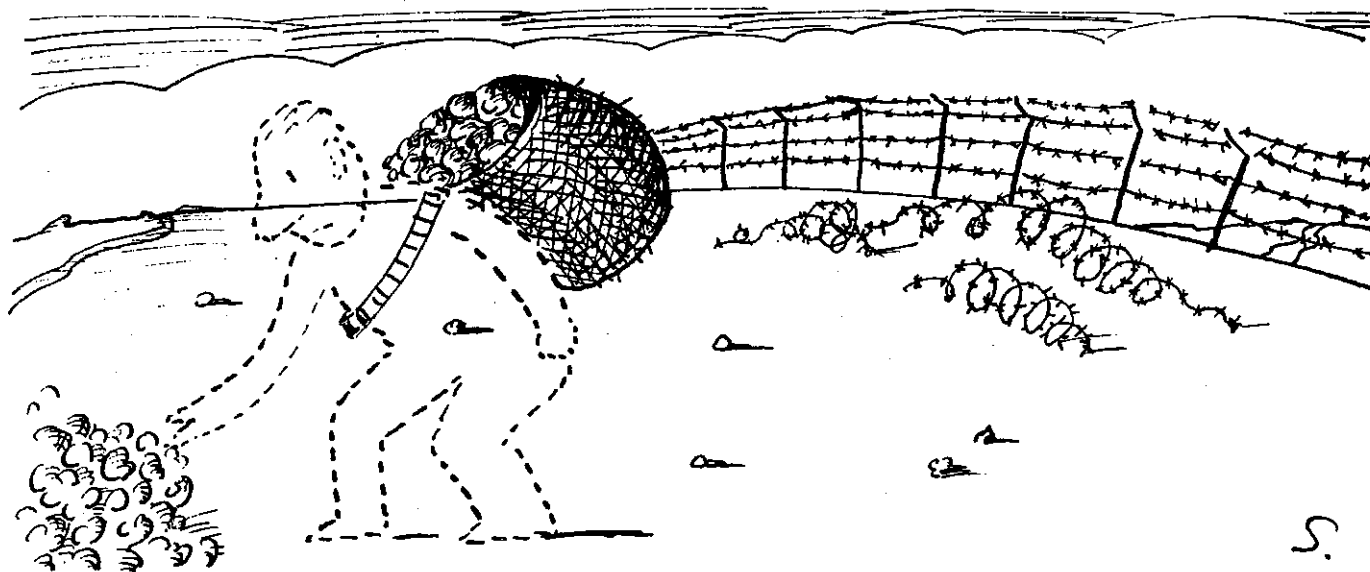
Office of Immigration-Related Unfair Employment Practices, a new entity within the Department of Justice created by IRCA to prevent misapplication of the law. According to a Justice Department spokesman, many of the complaints are concentrated in the hotel and airline industries. The office recently reached an agreement with Pan American World Airways in which the airline agreed to pay back-wages to a woman who had been denied employment because she had only temporary, not permanent, work authorization.

The protections of the new Justice Department office, however, apply only to immigrants with work permits. Grandfathered employees are not covered by its provisions, nor are the estimated 1 million to 6 million workers who did not apply for amnesty and remain undocumented. Moreover, the law does not cover the thousands of immigrants who continue to cross the border each month.

It is among this recently arrived population of immigrants that the long arm of the immigration law is being most keenly felt. Economic and political refugees escaping rural poverty in Mexico or counterinsurgency warfare in El Salvador and Guatemala report that they have found it increasingly difficult to find work. According to social service agencies and advocates who work with immigrants and refugees, these newcomers are swelling the ranks of the nation's hungry and homeless.

Several thousand Central American refugees live, at least temporarily, in the impoverished Rio Grande Valley of southern Texas. "The standard of living of recent arrivals is microscopic to begin with," says Jonathan Moore, a legal assistant with Proyecto Libertad, a refugee legal aid group in Harlingen, Texas. Now, he says, "people are even more hard up. Central American refugees in the valley sleep in the streets or in the orchards."

In the San Francisco Bay area, where the population of undocumented Salvadorans is estimated to be about 70,000, Catholic Charities has noted a doubling of requests for food and shelter from Central American refugees since July 1987. The organization's immigration project director, Patrice



DRAWINGS BY J-C SUAREZ

Perille, links this increase directly to IRCA. Refugee families that survived in the past by pooling the salaries of three or four members of the extended family, she explains, may now find that only one or perhaps no family member is able to find work. "Why are there more homeless and hungry people in the Latino community?" Perille asks. "It's because employer sanctions are having an impact on the safety net that has kept the extended Latino family alive for so long."

However, some undocumented workers still find a ready welcome from employers. In May, the *Los Angeles Times* reported that although many Southern California employers were complying with the letter of the law, a large number were continuing to hire undocumented workers. Says one businessman quoted in the *Times*: "We have all been hooked on cheap labor, like a drug." Circumventing the law is possible because employers are not required to check the authenticity of the documents presented to them by their workers and fraudulent documents are readily available.

Meanwhile, the new law has helped increase the number of agents and weapons the I.N.S. has at its disposal. The service's 1988 budget for enforcement activities—which include the Border Patrol, investigations, and detention and deportation—will total \$519 million, according to I.N.S. spokesman Duke Austin. The I.N.S. is increasing the number of its immigration inspectors from 850 to 1,700, and the Border Patrol is adding 1,100 officers, bringing its total

force to 4,300 officers by the end of the year.

Despite this stepped-up enforcement capability, many immigrants are resisting the new law with creative survival strategies. At the Refugio de Rio Grande, a shelter for 120 Central American immigrants just outside Harlingen, refugees have organized agricultural production communities to provide food for the shelter and keep employed without violating the provisions of the new immigration law. The Refugio already grows corn, zucchini and other vegetables on forty acres of land, and there are plans to expand into the raising of pigs, chickens and rabbits. "People are self-employed under the umbrella of a cooperative, which makes it completely legal," says Refugio attorney Lisa Brodyaga.

Some leading church groups have gone a step further and taken a position of open defiance. The Intercommunity Center for Justice and Peace, a coalition of more than forty Catholic religious orders in the New York City area, declared its noncompliance with employer sanctions in December 1987. According to Darlene Cuccinello, the coalition saw the decision to flout the sanctions as a natural outgrowth of its Central America solidarity work. "Everyone has a right to work," Cuccinello says. "Our church calls for the dignity of people. If people can't work, we're taking away their dignity. We're creating the possibility for them to be homeless and hungry."

Cuccinello points out that the decision was not an easy one, since organizations that defy the law risk heavy fines and face the possibility of having their nonprofit status revoked. Nevertheless, other organizations have followed suit, including the Long Island Sanctuary Coalition, Proyecto Pastoral of Los Angeles and The Sweater Loft, a wholesale and retail business in New York City.

Nor have IRCA's employer sanctions stopped the efforts of some undocumented workers to organize for their rights. Even employers who hire day laborers on streetcorners are discovering an unexpected solidarity among them. Contractors who cruise by the parking lot of a paint store on San Francisco's Mission Street expect to pay the Latino men gathered there a relatively low wage, perhaps even below the legal minimum. But despite the fact that the workmen come from a wide range of backgrounds—some are exiled trade unionists and student activists, others former policemen and National Guardsmen—they have agreed to reject any wage offer below \$5 per hour.

In Los Angeles, the International Ladies Garment Workers Union helped Mexican and Central American immigrant workers organize a nine-month strike and consumer boycott of the Ideal Textile Corporation, a textile converter, which ended last January. Among the leaders was a Salvadoran who openly admitted to the press that he was undocumented. "We often run into workers from El Salvador and Guatemala who are here precisely because of their labor activities in their native countries," says Peter Olney, an organizer for the I.L.G.W.U. who worked with the strikers. "They're a tough and hardy lot. If you stand up and proclaim your political allegiances in El Salvador, the risks are far greater to your personal safety than they are in a country like the U.S. from *la migra*. It's all relative." □