

The Rollback of Immigrant Workers' Civil Rights

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As the nation engages in a heated and emotional debate about the status and role of immigrant workers in the United States, two labor lawyers describe how the current immigration system coupled with the Bush administration's failure to enforce labor laws undermine labor standards for all workers in the United States.

For centuries, immigrants have come to the United States seeking refuge from social, political and religious oppression and searching for economic opportunity. Indeed, immigrants, toiling in difficult conditions for minimum or substandard wages, have helped build this nation into the economic power it is today. This was true of the immigrants from Germany, Great Britain, Ireland, China and Japan at the turn of the 20th century (the last great wave of immigration), as it is today of immigrants from countries, including Mexico, China, India, Korea, the Philippines, Vietnam, Cuba, the Dominican Republic, EI Salvador and Canada.



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Providing non-citizens with meaningful access to the judicial system is an important measure of a just society. Millions of low-income immigrants, however, face racial, ethnic, cultural and linguistic obstacles in accessing the courts. To make matters worse, the U.S. Supreme Court's 2002 decision to deny undocumented workers the right to sue for back pay under the National Labor Relations Act (NLRA) in *Hoffman Plastic Compounds Inc. v. National Labor Relations Board (NLRB)* provides employers with added incentive to exploit already vulnerable workers. Keeping in mind the economic contributions made by low-wage immigrant workers, the demographic shifts that have occurred over the past decade and the changing face of this country in the context of globalization, it is important to analyze this situation.

Immigrants Account for Significant Growth in Labor Force

According to the 2000 U.S. Census, 29 million foreign-born individuals live in the United States, accounting for roughly 11 percent of the population and 12.4 percent of the labor force. In the 1990s, half of all new entrants into the labor market (including those who are working or looking for work) were immigrants, accounting for much of the growth in the civilian labor force. Indeed, new immigrants accounted for the entire labor growth in the Northeast and mid-Atlantic regions, and 72 percent of the growth in the Pacific region.

Many unskilled immigrants work under exploitative conditions and often earn less than minimum wage. As a result, immigrants head one out of five low-wage families. Despite having a labor force participation rate similar to that of native-born Americans, 44 percent of immigrants who work full-time earn incomes under twice the poverty level (compared with only 22 percent of native-born

workers). Immigrants are disproportionately represented in dangerous industries (e.g., construction, manufacturing and agriculture), and in hazardous occupations within those industries. The number of work fatalities among immigrant workers far exceeds that of native-born workers—in 2002, immigrant workers made up 15 percent of the workforce but accounted for 69 percent of workplace fatalities, and Mexican workers were 80 percent more likely to die in a workplace accident than native-born workers.

According to a recent investigation conducted by the Associated Press, one Mexican immigrant worker dies on the job every day. The AFL-CIO report, [*Immigrant Workers at Risk: The Urgent Need for Improved Workplace Safety and Health Policies and Programs*](#), finds that workplace fatalities among foreign-born workers increased by 46 percent between 1992 and 2002.

Employers' reaction to the *Hoffman* decision was swift: they sought to extend the ruling to other workers' rights. In one absurd case just a few days after the decision, an employer's attorney warned a community group that had planned to protest unpaid wages that *Hoffman* had outlawed any such demonstrations and threatened legal action if the group went forward. Employers began to threaten to call immigration authorities against immigrant workers pursuing claims and requested that courts considering employment cases order an inquiry into the employees' immigration status.

The dissenting justices were right: *Hoffman* is proving to be an incentive for employers to violate both labor and immigration law. The perverse effects of the decision are clear in a case currently before the general counsel of the NLRB, where the employer is relying on its own admitted violation of immigration laws to absolve itself of back pay liability. In the case, 10 bakery employees told the general manager that a night-shift supervisor had failed to provide adequate lunch and bathroom breaks and had made abusive remarks, including "they work for nothing, whatever I decide to pay them, stupid Hispanics." He also made sexual remarks and threatened one worker with death. The workers were fired. They filed a charge with the NLRB.

Upon learning of the charge, the employer asked the workers to provide proof of work authorization and, more important, convinced the NLRB agent investigating the case to require that the workers provide her with proof of their immigration status. The employer argued that it was required to ask for work authorization because it had never completed 1-9 forms—in other words, the employer argued that *Hoffman's* ban on back pay should be triggered because it had violated immigration law by hiring undocumented workers. The NLRB accepted the employer's logic and refused to seek back pay for the workers. After an outcry from the workers' lawyer and the AFL-CIO, the NLRB decided to seek back pay but stated that if the employer could show the workers were undocumented, it would be allowed to use that status as a defense to back pay liability.

This approach is equally destructive of workers' rights. A worker who knows her immigration status is likely to be investigated if she complains about workplace conditions—whether that investigation is in the form of direct questions or through third parties—is unlikely to seek to enforce her rights.

For a country that prides itself on equal protection under the law and the notion of "inalienable" rights, we have created a subclass of workers who have no meaningful way of protecting their civil rights. The system harms workers and undermines immigration law and enforcement. Congress should act to clarify that all workers, regardless of immigration status, are entitled to the same legal protections and remedies as citizens. At the same time, Congress must amend the immigration policy in such a way that it recognizes the valuable contributions that undocumented workers made to our society.

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Excerpted from Awakening from the Dream, which celebrates the birth of the National Campaign to Restore Civil Rights. For more information on other chapters of this book, to view the table of contents, to order the book and to find out more, visit the [National Campaign to Restore Civil Rights](#).

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