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IRCA: IMMIGRATION REFORM OR WORKER CONTROL?

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The Immigration Reform and Control Act of 1986 (IRCA) represents a serious threat to workers' rights, their standard of living and their ability to organize. Under IRCA, immigrant workers have fewer rights than citizen workers. Employers now have more control over these workers both through direct legal means and because many immigrant workers are now ineligible for government programs or judicial relief. Unions are already recognizing that the loss of rights of immigrant workers and the subsequent increase in employer control over these workers should be a concern of all workers.

Prior to IRCA, immigrant workers, whether legally or illegally in the United States, had almost the same rights as citizen workers. They had the right to participate in unions, be paid the minimum wage and be protected by occupational health and safety standards as citizen workers. However, immigrant workers could be discriminated against in hiring for federal civil service jobs and jobs requiring a security clearance. The main difference between documented and undocumented immigrants has been that undocumented immigrants are excluded from many government programs, including unemployment insurance.

Immigrant workers earned the rights they have through their participation with citizen workers in struggles for better wages and working conditions. Eliminating employers' ability to divide and control workers based on legal status or ethnicity has

strengthened workers' bargaining power. But IRCA has seriously undermined the position of immigrant workers in the United States. It makes them second class citizens by legalizing discrimination based on immigration status. All groups of immigrant workers whether legal permanent residents, amnesty applicants, or undocumented immigrants, have fewer rights than citizen workers under IRCA. The second class status of immigrant workers increases employers' control over them.

Divisions Among Workers and Attacks on Workers' Rights Under IRCA

There are four distinct types of immigrant workers under IRCA, each with different rights. These are: legal permanent residents, legalization-eligible workers, grandfathered workers, and undocumented workers.

1) **Legal Permanent Residents (LPR)** are legally admitted immigrants that come to the U.S. because they have families in the U.S. or because they have skills needed by the U.S. economy. Prior to IRCA, there was no distinction between LPRs and citizens in hiring except for federal civil service jobs and jobs involving a security clearance. IRCA allows *all* employers to discriminate against legal permanent residents in hiring. Under IRCA, employers may select citizen workers over equally qualified legal permanent residents.

2) **Legalization-Eligible Workers.** Legalization programs were included in IRCA to soften the impact of employer sanctions and make the law more acceptable to liberal legislators. Two programs provide limited amnesty to individuals who meet certain criteria. General Legalization provides temporary residence for individuals who have continuously resided in the United States since January 1, 1982. The Special Agricultural Workers program provides legalization for farmworkers who worked for ninety days in seasonal agricultural work in a perishable crop between May 1, 1985 and May 1, 1986. These programs provide a once in a lifetime chance for many undocumented immigrants to obtain legal residence in the United States. Over one million undocumented immigrants have already applied for legalization.

Unfortunately, access to the legalization process is often controlled by employers. Many potential applicants do not have adequate documentation and must rely on their employers to certify their work histories. A farmworker's entire case depends on documenting his or her work records. Many general amnesty ap-

plicants are also dependent on employer records to document their work history. There have been many incidents of employers, growers and farm labor contractors failing to provide documents to legalization applicants for fear of having their illegal practices revealed (particularly their failure to pay taxes). This results in a situation where those who work for employers who support the legalization program are most likely to receive the information and documents to assist them with their applications. Those who work for unscrupulous firms will be unable to prove that they qualify.

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Another provision of IRCA prevents newly legalized workers from receiving benefits for up to five years from many government programs designed to aid low-income families. Exclusion from government programs undermines these workers' bargaining power and makes it easier for some employers to pay substandard wages and maintain unsafe working conditions.

3) **Grandfathered Workers.** A special provision of IRCA prevents employers from being sanctioned for employing undocumented workers hired before November 6, 1986. Such workers are safe in the jobs that they had on that date. They have a legal right to work as long as they stay with their current firm. But grandfathered workers cannot change jobs. If they are fired or permanently laid off, they lose their right to work in the U.S. When IRCA went into effect, some employers panicked and unnecessarily fired their grandfathered workers out of fear of sanctions. Grandfathering has greatly undermined these workers' ability to exercise their rights. Workers who cannot change companies also cannot risk being fired. They will be less likely to complain or engage in behavior that may threaten their jobs.

4) **Undocumented Workers Ineligible for Legalization.** No one expects IRCA to eliminate undocumented workers from the economy. Such workers continue to be employed, but obviously not by conscientious firms complying with Federal and State labor laws. Employers do not willingly risk fines and imprisonment without some strong economic incentive, such as substan-

dard wages or violations of health and safety standards. These workers will continue to be vulnerable to such employers. Their job opportunities will be restricted to the periphery of the labor market.

Prior to the IRCA, undocumented workers had many of the same rights as documented workers. Though they were often intimidated by employers and failed to exercise these rights, they were entitled to them. IRCA is changing this. A federal judge has already ruled that undocumented immigrants no longer have the right to demand the federal minimum wage. He ruled that to uphold the right of undocumented workers to a minimum wage would undermine the intent of IRCA. This ruling is being appealed.

Union Response to IRCA's Challenge

Many unions, particularly those with large numbers of affected workers, have already recognized the seriousness of IRCA. They know that the second class status of immigrant workers is divisive and benefits employers. These unions are concerned about their immigrant members. The Hotel Employees and Restaurant Employees Union (HERE), the United Farm Workers (UFW) and the International Ladies Garment Workers Union (ILGWU) all have programs to assist their undocumented workers in applying for legalization. Unions can often document their workers' eligibility, which reduces workers' dependence on their employers. Immediately after the passage of IRCA, the ILGWU sent a strong letter to employers about the rights of grandfathered employees. Additionally, these unions are educating their members about IRCA's challenge to workers rights as cases arise.

IRCA affects all workers, not just immigrant workers. The vulnerability of immigrant workers to attacks on their rights, their pay and their working conditions undermines the position of all U.S. workers. Workers who are ineligible for social services or who cannot legally change jobs are under extraordinary pressure to conform to employer demands. These workers are less likely to engage in strikes, sign union cards, complain about safety violations or ask for pay raises. Employers know that such workers do not need to be paid as much nor treated as well as workers with full civil and employment rights. IRCA's attack on immigrant workers' rights threatens the effectiveness of unions and the ability to maintain all workers' rights.