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A Victory for Labor Standards Overshadowed by Trumps Immigration Policies

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Asparagus pickers. Photo taken in the valley of Maneadero, south of Ensenada, Baja California. © Tomas Castelazo, www.tomascastelazo.com (<http://www.tomascastelazo.com/>) / [Wikimedia Commons](https://commons.wikimedia.org/wiki/Main_Page) (https://commons.wikimedia.org/wiki/Main_Page).

On June 22, 2017 (<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/06/22/15-16120.pdf>), the Ninth Circuit Court of Appeals held that deportation cannot be used as retaliation against undocumented workers who exercise their labor rights. Despite this victory, recent immigration policies discourage undocumented workers from exercising their labor rights.

The last comprehensive immigration reform was passed in 1986. The Immigration Reform and Control Act (IRCA) gave roughly 2.7 million undocumented (https://www.washingtonpost.com/news/wonk/wp/2014/11/26/what-happened-to-the-millions-of-immigrants-granted-legal-status-under-ronald-reagan/?utm_term=.c83f1f644911) immigrants legal status. Enactment of IRCA was intended to stop illegal immigration into the United States. However, more than thirty years later the U.S. still faces an immigration issue of an estimated 11 million (<http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>) undocumented immigrants. Part of the failure of IRCA was that Congress did not anticipate the need of immigrant workers by future employers. According to the Migration Policy Institute, demand for undocumented immigrant workers continues to be a factor in undocumented immigration, with 90 percent (blank) of unauthorized males employed.

IRCA made it illegal for employers to hire undocumented workers. Since 1986, employers who knowingly hire undocumented workers face sanctions in the form of fines and even criminal penalties. Yet, enforcement of employer sanctions has remained minimal since employers are only required to

verify that their workers' paperwork "reasonably appears on its face to be genuine."
https://www.washingtonpost.com/news/wonk/wp/2013/01/30/in-1986-congress-tried-to-solve-immigration-why-didnt-it-work/?utm_term=.80b038c1cfe8.



Given this background, an undocumented worker, Jose Arnulfo Arias
<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/06/22/15-16120.pdf>, began to work as a dairy farm laborer for Angelo Dairy in 1995. At the time Mr. Arias was hired, Angelo Dairy did not complete the Form I-9
<https://www.uscis.gov/i-9>, as required by federal law to verify legal status in the United States. Two years later, Mr. Arias notified Luis Angelo from Angelo Dairy that he was offered employment at another dairy farm. Luis Angelo informed Mr. Arias that "if [Arias] left to work at the other dairy, [Angelo] would report the other dairy to federal immigration authorities as an employer of undocumented workers." Mr. Arias continued to work for Angelo Dairy until 2006, at which point, he filed a lawsuit against Angelo Dairy under the California Unfair Competition Law
<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/06/22/15-16120.pdf>, for workplace violations for failure to provide overtime pay, as well as, rest and meal periods.

Ten weeks prior to the state court trial, Anthony Raimondo, Angelo Dairy's attorney, established communication with U.S. Immigration and Customs Enforcement (ICE) to initiate the detention of Mr. Arias at a scheduled deposition. Having learned that Raimondo had enlisted ICE, Mr. Arias, settled in lieu of going to trial for fear of being deported and separated from his family. This was not the first time Raimondo had used the threat of ICE. Raimondo had developed a reputation
<https://www.fairwarning.org/2017/10/raimondo/>, for using such tactics to intimidate and silence workers. While unethical, his tactics were permitted by the California Rules of Professional Conduct
<http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-5-100>. Under rule 5-100, a lawyer, "shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute

(<http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-5-100>).” Raimondo claimed that he did not “threaten” to present criminal charges, instead, he simply reported his client’s employees to ICE.

Risking being deported and being separated from his family, Mr. Arias filed a lawsuit in federal district court under the Fair Labor Standards Act (FLSA) against Angelo Dairy, and Raimondo. Under [FLSA section 214\(a\)\(3\)](https://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf) (<https://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>), an employer cannot retaliate against employees for asserting their rights under FLSA. Raimondo argued that since he was not Mr. Arias’ employer he could not be held liable under FLSA. In opposition, Mr. Arias argued that since Raimondo was acting on behalf of his employer, he was liable under FLSA for retaliation against him for filing the original case in state court.

The [Ninth Circuit Court of Appeals](http://cdn.ca9.uscourts.gov/datastore/opinions/2017/06/22/15-16120.pdf) (<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/06/22/15-16120.pdf>) reasoned that while the wage and hour provision of FLSA refers to an employer, the anti-retaliation provision relates to “any person” who retaliates. Further, Congress’ intent of FLSA section 215(a)(3) reached beyond actual employers. Ultimately, the court reversed the district court’s dismissal of Mr. Arias’ claims. The court held that section 215(a)(3) applied to Raimondo’s activities, and as such, Mr. Arias should be allowed to proceed against Raimondo for retaliation under FLSA section 215(a)(3).

Raimondo and his attorneys filed a petition for writ of certiorari to the U.S. Supreme Court, but it was denied in January 8, 2018. The Arias decision provides a strong protection to undocumented workers who are some of the most vulnerable to labor standards abuse. Nevertheless, the effects of this decision are practically negated by Trump’s approach towards immigration.

Looking back to Trump’s 2016 campaign, it was characterized by xenophobic rhetoric against immigrants. One of Trump’s main target was, and is, undocumented Mexicans. He claimed undocumented Mexicans were [violent criminals, terrorists and rapists](http://time.com/4473972/donald-trump-/) (<http://time.com/4473972/donald-trump-/>). Contrary to his rhetoric, [multiple studies indicate](http://www.governing.com/topics/public-justice-safety/gov-undocumented-immigrants-crime-pew.html) (<http://www.governing.com/topics/public-justice-safety/gov-undocumented-immigrants-crime-pew.html>), that undocumented immigrants have a lower crime and incarceration rate than native born Americans. Once President Trump took office, he began to use his Executive Power to implement his anti-immigrant stance.

On January 25, 2017, Trump signed Executive Order “[Enhancing Public Safety in the Interior of the United States](https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/) (<https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>)” which forbids sanctuary cities from receiving federal funds and prioritizes deportation of criminal undocumented immigrants. [In application](http://cmsny.org/trumps-executive-orders-immigration-refugees/?gclid=CjwKCAjw7tfVBRB0EiwAiSYGM6P1zw0Rv-FkmeKs0yuotwxZJ6CVWjRrq3LQ5c2UXakqR-s4KEXDRoCMQMQAvD_BwE) (http://cmsny.org/trumps-executive-orders-immigration-refugees/?gclid=CjwKCAjw7tfVBRB0EiwAiSYGM6P1zw0Rv-FkmeKs0yuotwxZJ6CVWjRrq3LQ5c2UXakqR-s4KEXDRoCMQMQAvD_BwE), undocumented immigrants who have committed minor offenses, such as, jaywalking or who misrepresented their status to obtain work, are considered criminals and subject to deportation. Under the previous [Obama administration](https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not) (<https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not>), deportation was a priority only for those who were convicted of a serious crime such as a felony or multiple misdemeanors. Trump has rigorously implemented his policy to deport millions of undocumented immigrants. ICE sweeps that include [courthouses sweeps](https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/immigration-arrests-state-courthouses-are-rise) (<https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/immigration-arrests-state-courthouses-are-rise>) have paralyzed the immigrant community with fear.

Trump’s harsh anti-immigrant policies and rhetoric has had significant effects on the behavior of undocumented immigrants. Out of fear, many immigrants try to stay “[under the radar](https://www.migrationpolicy.org/research/immigration-under-trump-review-policy-shifts) (<https://www.migrationpolicy.org/research/immigration-under-trump-review-policy-shifts>)” so they

refrain from reporting workplace violations. The U.S. Department of Labor (<https://www.theguardian.com/us-news/2017/mar/30/undocumented-workers-deportation-fears-trump-administration-department-labor>). (DOL) reports that undocumented workers are refusing to cooperate with them due to fear of deportation. The DOL is responsible for assuring work-related benefits and rights for all workers regardless of legal status (<https://legalaidatwork.org/factsheet/undocumented-workers-employment-rights/>). Under a “memorandum of understanding” (<https://www.dol.gov/sites/default/files/documents/MOU-Addendum.pdf>)” (MOU), the Department of Homeland Security and Immigration and Customs Enforcement (ICE) agree not to engage in immigration enforcement while DOL is conducting their own worksite investigations, unless it is a matter of national security, protection of critical infrastructure, involves a federal crime or the enforcement activity is directed by the Secretary of Homeland Security.

Still, the MOU is of small to no comfort for undocumented workers who fear that enforcing their labor rights will result in deportation. While the DOL claims that undocumented workers will not risk deportation if they report wage and hour violations or other workplace violations, under the current administration they cannot guarantee that they will not be deported once they show up at the courthouse to enforce their labor rights. As evidently, under the Trump administration, ICE has apprehended undocumented immigrants at or near courthouses.

A community paralyzed by fear, consequently will not be as willing to stand up for themselves or others when it comes to labor injustices, crimes committed against them, and so forth. Undocumented immigrants, such as Arias, who Judge Trott characterized by quoting *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, as “not . . . dealing with mere chattels or articles of trade but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others (<http://cdn.ca9.uscourts.gov/datastore/opinions/2017/06/22/15-16120.pdf>)” are more willing to endure unsafe working conditions, wage and labor violations rather than risk being deported and separated from their families. The reality is that while attorneys like Raimondo can no longer use the threat of deportation as retaliation against undocumented workers, Trump’s immigration policy will discourage undocumented workers from exercising their labor rights.

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