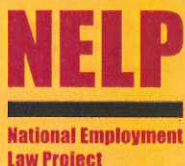


Workers' Rights on ICE

How Immigration Reform Can Stop Retaliation and Advance Labor Rights



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About NELP

The National Employment Law Project (NELP) is a non-profit legal organization with over 40 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of labor standards laws, and that employers are not rewarded for skirting those basic rights.

Through its Immigrant Worker Justice Project, NELP works at the intersection of labor law and immigration law. We seek to expand and defend the labor rights of all workers, and to ensure that immigrant workers can assert their labor rights in a climate of equality and fairness, free from fear of reprisal. Our partners include workers centers and unions, immigrant rights groups, progressive lawyers, and community organizations. With them, we promote policies that expand the power of community organizing and protect immigrant workers' labor, civil, and human rights.

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Executive Summary

Often [immigrants work in] a shadow economy, a place where employers may offer them less than the minimum wage or make them work overtime without extra pay. And when that happens, it's not just bad for them, it's bad for the entire economy, because all the businesses that are trying to do the right thing that are hiring people legally, paying a decent wage, following the rules, they're the ones who suffer. They have got to compete against companies that are breaking the rules. And the wages and working conditions of American workers are threatened too.

— *President Barack Obama, January 29, 2013.*¹

For the first time in many years in the United States, a broad consensus of policymakers and ordinary citizens agrees that the time has come for an overhaul of our immigration system. This overhaul will benefit immigrant workers, workers in low-wage sectors of our economy, and the economy as a whole.

The U.S. labor market remains weak, with three unemployed workers competing for every available job. This imbalance gives employers great power to set the terms and conditions of employment and to violate workers' rights without fear of consequences. This is especially the case in low-wage industries marked by rampant workplace abuse.

Employers and their agents have far too frequently shown that they will use immigration status as a tool against labor organizing campaigns and worker claims. From New York to California, Washington to Georgia, immigrant workers themselves bear the brunt of these illegal tactics. For example,

- A California employer falsely accuses a day laborer of robbery in order to avoid paying him

for work performed. Local police officers arrest the worker. Although the police find no merit to the charges, he is turned over to Immigration and Customs Enforcement (ICE).

- A company in Ohio, on the eve of a National Labor Relations Board (NLRB) decision finding it guilty of several unfair labor practices, carries out its threats to “take out” union leadership by re-verifying union leaders' eligibility to work in the United States.
- A Seattle employer threatens workers seeking to recover their unpaid wages with deportation, and an ICE arrest follows.
- An injured worker in New York is arrested, at his employer's behest and on false criminal charges, just moments before a hearing on his labor claims.
- In the Deep South, a group of immigrant workers are facing deportation solely because they are defending labor and civil rights. The Southern 32 have exposed ICE's refusal to offer workers protections when enforcement actions block worker organizing on construction sites and day labor corners.

Silencing or intimidating a large percentage of workers in any industry means that workers are hobbled in their efforts to protect and improve their jobs. As long as unscrupulous employers can exploit some low-wage workers with impunity, all low-wage workers suffer compromised employment protections and economic security. Law-abiding employers are forced to compete with illegal practices, perpetuating low-wages in a whole host of industries.

The Obama administration has taken some steps to prevent immigration status-related retaliation by protecting immigrants who are victims of crime in the workplace, and by exercising prosecutorial discretion in limited cases to protect immigrant workers involved in labor disputes. But these efforts are not enough, particularly given the expansion of immigration enforcement at the federal and local levels. The U.S. government currently spends more on its immigration enforcement agencies—\$18 billion in fiscal year 2012—than all other federal law enforcement agencies combined.² The build-up of immigration enforcement provides unscrupulous employers with additional tools to retaliate against immigrant workers who seek to exercise their rights.

We can create a real, effective, pro-immigrant worker reform agenda to ensure that workers can speak up about labor abuses, now and in the future. We must learn from worker experiences and the failed policies of the past.

First, we must ensure that the eleven million undocumented immigrants living in the U.S. have the ability to become citizens and exercise our most cherished freedoms. Immigration reform must include a broad and fair path to citizenship that brings low-wage immigrant workers – including “contingent” workers like caregivers and day laborers – out of the shadows. Immigration reform must allow these aspiring citizens to work

collectively to upgrade jobs and contribute to a growth economy. As we know from the 1986 immigration reform, creating more U.S. citizens through a legalization program will improve wages and working conditions for all workers. In the process, it will strengthen our economy.

Second, to solidify the gains that will come from immigration reform, we must ensure that no employer can use immigration law to subvert labor laws and to retaliate against workers in the future. A new immigration policy must include:

- Equal remedies for all workers subjected to illegal actions at work;
- A firewall between immigration enforcement and labor law enforcement; and
- Immigration protections for workers actively engaged in defending labor rights
- Robust enforcement of core labor laws in low-wage industries.

The National Employment Law Project (NELP) has prepared this analysis and offers the stories of immigrant workers to underscore the importance of ensuring workplace protections for all who work in the United States, regardless of status, and to emphasize the critical need for a broad pathway to citizenship. Such protections will benefit all workers by raising workplace standards and removing rewards for employers who abuse workers for their own gain.