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1986 Mass Legalization: How the IRCA Can Guide a Modern-Day Amnesty Act

Louise Carhart

The 1986 Immigration Reform and Control Act (IRCA), passed by Ronald Reagan on November 6, 1986, was the first comprehensive legislation to address immigration law in twenty years. The United States had come to rely on immigrant labor, but failed to provide a permanent solution for these workers. The majority of undocumented immigrants were seasonal, temporary, migrant workers who did not add significantly to the overall population. IRCA created a legal path to citizenship for three million undocumented workers and migrants.

Since the 1986 Act, immigration rates have risen, along with the percentage of undocumented workers. The effects of IRCA, passed 34 years ago, have had a massive impact on the personal lives and well-being of formerly undocumented Americans. The unique challenges facing undocumented Americans today are unlike any of those seen in the late 80’s. undocumented Americans still work in highly vulnerable industries, such as agriculture and meatpacking, but face different challenges. A combination of aggressive anti-immigration policy and economic shifts have left undocumented Americans in a precarious position. As the country confronts a crippling pandemic and worsening climate change, mass legalization is a crucial humanitarian solution to specific threats faced by the undocumented community.

IMMIGRATION REFORM IN THE MID 20TH CENTURY

The relationship between the American economy and migrant labor goes back decades, but the common image of immigrants as farm workers was solidified in the years following World War II. From 1942-1964 the Bracero Program allowed millions of Mexicans to become temporary workers in the agricultural industry. The program funneled Mexican, and by default migrant, workers into the farming industry like never before. This created a large-scale shift that persists today. American agricultural businesses came to rely on migrant workers, creating a symbiotic relationship between the American economy and migrant labor.

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1 Ariva Chomsky, Undocumented: How Immigration Became Illegal 55 (2014) [hereinafter “Chomsky”].
2 Chomsky, supra note 1.
economy and cheap, migrant labor. The Bracero Program was a legal, bureaucratic response to the lack of agricultural labor, but not every worker or employer sought to jump through governmental hoops meant to regulate and standardized migrant work.

The modern-day cottage industry surrounding “illegal” migration developed alongside the Bracero Program almost immediately after its inception. Many farmers were unable to apply for workers, as the Mexican government had blacklisted their states for labor violations. Many just didn’t want to go through the government to hire workers. Here, we can see the beginnings of the current migration economy. Farmers became dependent on the cheap labor provided by migrants while also normalizing subverting the system, often at the expense of labor rights and protections. Additionally, many workers never received the 10% of their wages garnished to the Mexican government as a kind of bond, ensuring migrant workers would return home at the end of the season. The failures of the State to enforce basic provisions of the Bracero Program undoubtedly motivated migrants to opt out of the legal system and take extra-legal action. Migrant workers had received the signal that the American government was more committed to neo-liberal ideals than the civil-rights movement, which ended the Program as its flaws were exposed.

As the Civil Rights Era progressed, it became clear to President Lyndon B. Johnson that the Bracero Program, and similar legislation, were becoming fatally unpopular. In response, Johnson laid the groundwork for the 1986 Act by signing the Immigration Reform Act of 1965 (IRA). The IRA was signed in front of the Statue of Liberty, in an effort to showcase Johnson’s good faith. The IRA eliminated the quota system that limited visas issued to Europeans, Africans, and Asian and Pacific Islanders, instituted a cap of 170,000 immigrants from the Eastern Hemisphere, and imposed new limitations on work visas issued to applicants from the Western Hemisphere. These limitations were meant to diversify the flow of immigrants, but instead created a

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5 Chomsky, supra note 1, at 56.
6 Id. at 57.
7 Id.
9 Id.
“gatekeeping” effect that continued to discriminate freely.9 The true intent was to decrease or make more difficult immigration from Latin America, Asia, and Africa. The IRA is credited today with creating the “family preference” immigration process in attempts to promote reunification.10 IRCA built off of the establishment of a path to legal status while similarly ignoring the needs of migrant workers.

AMNESTY WITHOUT LABOR PROTECTIONS

In 1985, the IRCA was proposed as a continuation of the Carter administration’s attempts to increase border security while acknowledging the need to address the large undocumented worker population.11 Contemporaneous accounts describe the conditions on the border where many undocumented workers came and went with impunity.12 The fluidity of the border and Mexico’s dependence on the American economy were the main stimulators of immigration.13 It was estimated that at the time the IRCA was passed some 10 million undocumented Americans lived in the Southwest alone.14 During the period between 1965-1986 most migrant workers passed back and forth across the border, adding little to aggregate population in the United States.15 Despite the continued reliance on migrant labor, employment conditions had not improved and protections were almost non-existent.16 On the border, long known as an “open wound” by its neighbors, militarization was building despite a complete inequity of resources.17 The inherent contradiction of allowing a porous border to facilitate cheap labor while building animus against migrants prompted President Ronald Reagan to take action and champion the IRCA.18

Drawing on earlier legislation that had legalized European immigrants, the IRCA extended status to undocumented Americans with ties to the United

9 See Hoffnung-Garskof, supra note 8, at 127.
12 See Chomsky, supra note 1, at 60.
13 Gloria Anzaldúa, Borderlands/La Frontera: The New Mestizo 10 (1987) [hereinafter “Anzaldúa”].
14 Id. at 9.
15 See Chomsky, supra note 1, at 61.
16 Id.
17 See Anzaldúa, supra note 13, at 3, 11.
18 See Chomsky, supra note 1, at 61.
States.\textsuperscript{19} Two groups emerged from the legislation- “special” agricultural workers (SAW) and pre-1982 immigrants.\textsuperscript{20} For the pre-1982 group, undocumented immigrants were eligible to adjust their status to lawful permanent resident (commonly known as a “green card” or LPR status) if they could show three years of continuous presence in the U.S. since 1982.\textsuperscript{21} SAW-eligible immigrants needed only to show 90 days of continuous work in the year prior to 1986.\textsuperscript{22} Evidence of continuous presence includes pay stubs, W2’s, and billing records. The IRCA allowed 3 million undocumented immigrants to achieve status, about a million of those under the SAW provision.\textsuperscript{23} The SAW program was the first mass-legalization of temporary workers, which was unsurprising given the low standard for eligibility. Within 2 years millions of immigrants were given amnesty, removing the always-present threat of deportation and opening doors to the legitimate legal system of the United States.

While the SAW program was an unprecedented legitimization of the cheap migrant labor American agriculture had come to rely on, the intended effect did nothing to improve labor standards in the following years. The IRCA had been passed as a means of legalizing an existing workforce while discouraging future illegal immigration by increasing funding to border control.\textsuperscript{24} This was not the result. The IRCA required workers to show proof of authorization to work but did not require employers to verify the proof.\textsuperscript{25} Employers were subject to small fines, but the onus fell back on workers to protect themselves. These lax rules for employers ensured that immigrants would continue to find work while making it even more difficult to achieve fair protections.

\textbf{SOCIAL AND ECONOMIC EFFECTS OF MASS LEGALIZATION}

The true effect of the IRCA on the lives of migrant workers manifested in the social and economic benefits to both recipients of legal status and the country. Overall, recipients of LPR status through the IRCA saw a correlation

\textsuperscript{19} See Chomsky, supra note 1, at 61.
\textsuperscript{21} See Chomsky, supra note 1, at 61.
\textsuperscript{22} See Rytina, supra note 20.
\textsuperscript{23} See Chomsky, supra note 1, at 61.
\textsuperscript{24} Id. at 62.
\textsuperscript{25} Id. at 114.
between status and obtaining higher level jobs. Additional research shows that women, whether documented or not, trail men in occupational mobility. The overall experience for female immigrants improves greatly when they achieve status. Especially compelling for supporters of legalization is the evidence showing farmworkers experienced the most job mobility when they reached naturalization. The increased job mobility improved quality of life for immigrants and their foreign and US-born children within, on average, five years. As more people gained higher paying, legitimate jobs, the wage benefit under the IRCA was about 6%. In addition, these higher paying jobs increased the number of workers returning to school as they were given access to the education system. In a study done by the University of Wisconsin, the differences between the incomes of status-holding and undocumented families were stark; for children of undocumented workers the chances of being in the bottom economic households are 6.8 times higher than a child of LPRs.

These LPRs were now eligible for social benefits after paying income taxes for, in some cases, years. With increased access to benefits like healthcare, medical spending has decreased for immigrants, especially for those with access to early, preventative care. When immigrants seek care later on in a diagnosis, their costs are often higher and more likely to transfer to taxpayers. This is especially important when discussing agricultural workers, who show higher chances of unhealthy living for both children and adults due to exposure to toxic pesticides. Children of undocumented parents are at much higher risks for recent illness and are often sicker for longer.

27 Id.
28 See Rytina, supra note 20, at 4.
29 Id.
30 Sherrie A. Kossoudji & Deborah A. Cobb-Clark, Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population, 20 J. of LAB. ECONS. 598 (July 2002) [hereinafter “Kossoudi”].
31 Id. at 618
32 Shawn Malia Kanaiapuni, Child Well-Being and the Intergenerational Effects of Undocumented Immigrant Status, INSTITUTION FOR RES. ON POVERTY, 19 (June 2000).
33 Id. at 2
34 Id. at 9.
35 Id.
36 Id. at 10.
37 Id. at 19
The benefits of legalization are clear and great gains can be made in a short amount of time by expanding legal status. The need for reform becomes even greater as we face the dual threat of a pandemic and climate crisis.

TODAY’S CONDITIONS REQUIRE MASS LEGALIZATION

While the IRCA was designed to eliminate illegal immigration, the actual result was far from that goal. Partially because of existing illegal infrastructure, many employers continued to subvert the legal process for hiring. 38 Many workers who gained status moved away from agriculture and the neo-liberal process required cheap labor to fill those spots. 39 The agricultural industry solved the worker shortage by adopting Farm Labor Contractors, meant to outsource the actual hiring of undocumented migrants and shift liability to a third party. 40 As the agricultural industry began to replace the now legal SAW recipients, migrant work was increasingly being exploited in new industries. Following a fall in wages in the decades between 1980 and 2007, the meatpacking industry began shifting its workforce to primarily migrant-based. 41 These two industries are notoriously harsh on its employees due to conditions in meatpacking factories and in agriculture. As put by Micaela Garrido, Outreach Coordinator at the Legal Aid Society, “When you think migrant worker what is the image that comes to your mind vs. expat? At the end of the day, they should be the same . . . COVID has really shown a stark difference for migrant workers globally, how they really are cut out of whatever protective systems there are. That reflects back on us from a public health perspective.” 42

By the government’s own standards, risks of a COVID-19 outbreak in a meatpacking facility are higher than the average workplace. 43 Following the April 28, 2020 executive order declaring meat and poultry processing “essential” under the Defense Production Act (DPA), meatpackers, a large proportion of whom are undocumented, were forced to stay on the job through the

38 See Kossoudi, supra note 30, at 623.
39 See Koulish, supra note 11, at 61.
40 See Chomsky, supra note 1, at 123.
41 Id. at 134.
42 Video conference Interview with Micaela Garrido, Outreach Coordinator, Legal Aid Society (Oct. 15, 2020) [hereinafter “Garrido”].
public health crisis regardless of working conditions. Of the 16,233 workers who were infected with COVID-19 during April and May 2020, 87% were racial or ethnic minorities. "The nature of meat processing plants is that they're standing side by side, there's no other way around it. They have plastic barriers between them, but they're still side by side," said Garrido. The executive order issued by the White House directed meatpacking facilities to follow the CDC guidelines, but did not require or impose any kind of COVID-19 safeguards.

In addition to meatpacking, agricultural workers have been designated as critical infrastructure and face similar challenges when enforcing COVID-19 prevention measures. As of July, only eight states had instituted mandatory protections for farmworkers; only two are in the Midwest, the agricultural center of the United States. Garrido pointed out that, “of course it’s giving into pressures to preserve the food supply chain, from an economic perspective. [The workers are] still required to meet the same kind of outputs, even if they have a staggered schedule.” Undocumented immigrants are the large majority of the workforce in the agricultural industry and many live in dormitories and shared spaces while on the job. These dormitories and shared facilities make social distancing and other measures almost impossible, ensuring that an outbreak spreads quickly. “You’ve got these close quarters where everyone is held, they’re bussed together, they do everything together, but [the] Federal Department of Labor said that the imposition of new regulations on housing was not within their mandate,” said Garrido. Current CDC guidance recommends keeping six feet of distance and basic PPE and sanitizing processes while acknowledging the heightened risk of shared living spaces and transportation.

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45 See CDC Update, supra note 43.

46 See Garrido, supra note 42.


48 See Garrido, supra note 42.

49 Id.

50 Id.

The lack of legal protections for undocumented workers prevents a comprehensive response to COVID-19 and other future disasters. As the nation continues to rely on undocumented workers for the food they eat, their wellbeing and safety is at risk. Garrido stressed that: “We really want to integrate them into the solution. We’re talking about 1.6 mill farmworkers. Again, not all of them undocumented, not all of them on work visas, but most of them are. [About] 80% of them.” 52 During a health crisis, these undocumented workers are unlikely to have medical insurance or the job mobility to find alternative employment. These workers are engaged in a public service, as evidenced by the executive orders requiring them to continue their jobs, but have no access to the public social services their incomes taxes fund. As Garrido put it, “They never thought that they would be considered essential workers.” 53

CONCLUSION

The 1986 IRCA vastly improved life for formerly undocumented immigrants. As the United States has continued to rely on cheap, unregulated, undocumented labor, the risks for these workers have only increased. The 1986 example provides a template for advancing mass legalization today, when undocumented workers are facing unprecedented risks.

52 See Garrido, supra note 42.
53 Id.
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