

On the Fruit Front Line

Legal workers suing employers for lost wages under the RICO statute

by **Howard Foster**

Yakima, Washington, deep in an irrigated, hundred-mile long valley, produces most of America's apples. Consumers will recognize them at virtually every supermarket from coast to coast by the small stickers emblazoned with the trade name "Washington State Apples."

Vdare.com readers already know that the agricultural sector of the American economy is rife with illegal "immigrants." But my experience in litigation against two of the local Yakima fruit companies provides a rare glimpse into just how rotten this industry is – and how its illegal hiring is perpetuated. What I have learned is far worse than what we've been led to believe.

This small city might seem to some as heartland territory. In the small downtown you find a mall, a courthouse, plenty of cheap restaurants and motels, and not a trace of the sophistication of Seattle, two hours to the west.

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But look just a bit closer and you suddenly sense that border-feel that is instantly noticeable in El Paso. For Yakima, a good 1500 miles from the border, is overrun with Mexicans. The vast majority are working in the area's agricultural enterprises, picking and packing fruit. Any quaint American small-town or western flair has long been smothered by the endless taco joints and money transmittal outfits that line the streets just beyond the core of the city.

I go to Yakima to do some-thing nobody has ever done: to sue the Zirkle and Matson Fruit Companies, two of the local fruit operations, for knowingly hiring illegal aliens. (I am the pioneering lawyer that brought the first cases under an untested legal theory based upon the Racketeer Influenced and Corrupt Organizations Act — RICO.) I have brought suit on behalf of legal workers for two fruit companies because their wages were depressed by the companies' illegal immigrant hiring scheme. If these two fruit companies complied with the law, and had not hired illegal workers, my clients would have received wages that were at least 20 percent higher than what they were actually paid to sort and pack apples into boxes — about

\$6.00/hour.

The local federal judge dismissed the case. I appealed the dismissal to the San Francisco-based Ninth Circuit Court of Appeals (reviled by conservatives for, among other rulings, holding that the Pledge of Allegiance is an unconstitutional breach of the separation of church and state). Last year the Ninth Circuit reversed the dismissal and ordered the case to proceed. This established a precedent that can be used in similar cases throughout the country. [Mendoza v. Zirkle Fruit Co., 301 F.3d 1163, 9th Cir. 2002.]

Two weeks after the Ninth Circuit's decision, Zirkle placed a full page ad in the *Yakima Herald Tribune* comparing me to the September 11th hijackers. The ad was signed by many Zirkle employees, vouching for the good faith of their employer's hiring policies, all with Hispanic surnames.

The case was returned to the same judge who dismissed it (normal procedure), with instructions on how to correctly handle it. I have begun taking depositions of the apple companies' owners and human resources managers.

By far the most interesting

person is an attractive naturalized American citizen named Juana Castenada, who holds a key position at Zirkle: deciding whether job applicants are eligible for employment based upon their documents.

Ms. Castenada has an interesting background for such a position. She entered the U.S. illegally and obtained her job at the company with fake social security and green cards, which she purchased in a Yakima parking lot for \$50. She is now married to the company's human resources director. Needless to say the manner in which she obtained her first job at Zirkle has not adversely affected her employment, even though it was a federal crime for her to use fake documents to obtain employment, and another one for Zirkle to accept them knowing they were fakes.

Let's be realistic about this. It takes well over a decade to lawfully obtain a green card, and this woman was just days away from her swim across the Rio Grande when she presented her "lawful permanent residency" and social security cards to Zirkle — without having so much as a word of English.

This, as you may expect, is the usual profile of Zirkle's hourly paid workers: illiterate, Spanish-speaking, and possessing shiny new green cards, sometimes issued to someone else with the original falsifier's picture on the card (they can be borrowed, like a library book, for a fee cheaper than outright purchase). No problem — Zirkle hires them all. And when there is a close case, the

aforementioned Ms. Castenada decides whether the applicant is legally authorized to be employed.

By 1997 Zirkle's hiring practices had become so flagrantly offensive that even the usually inert INS took action. They conducted a raid and ordered the company to fire over 100 workers. (Previously the INS would announce its "inspections" to area agricultural companies in advance. Supervisors would warn known illegals, and on inspection day, up to half the workforce would be "absent." This happened so often at co-defendant Matson Fruit Co. that it decided to skip the pretense and maintain two sets of employment records, one for INS use, and another one for its own.) The raid changed nothing at Zirkle. It kept Ms. Castenada in her job and continued its hiring policies in place.

Now I've filed a motion to

amend the lawsuit to add Bill Zirkle and Rod Matson, the owners of the respective companies, as defendants, exposing them to tens of millions of dollars in liability (which is tripled under RICO, if the case is successfully proven to a jury). Their lawyers contend naming them personally in this class action, rather than their corporations, is an act of "bad faith."

But I just can't forget the image of Ms. Castenada giving her deposition — through an interpreter, as her English is still rudimentary despite her position in the company — stating with confidence that her actions were perfectly legal because she was simply following the orders of her superiors (her husband, who is the HR director, and Mr. Zirkle himself).

To be continued... •

**The Candidates for President:
What Are Their Positions on Immigration?**

Log onto the website of Americans for Better Immigration at:
www.betterimmigration.com/candidates/
for a "Presidential Candidates Grid Page"
on immigration issues.

What is the difference among the candidates? Unfortunately, not much. Still, citizens need to know the facts in order to at least make candidates pay a little price for their various immigration stands.

Americans for Better Immigration devoted a lot of time and expense to putting this together. ABI hired Dr. Louisa Mattozzi, Ph.D., history, University of Virginia, to do the research. She will be constantly updating it as the campaign progresses.

Candidate have separate fact pages with information on ways to phone and email them about their positions. Such contacts do have an effect.