

Suing Employers Who Hire Illegal Immigrants

by Dan Stein

It has been evident for quite some time that the political system will not enforce immigration laws. In spite of overwhelming evidence that rampant illegal immigration is an enormous financial burden to taxpayers, a strain on public services and a threat to national security, the pressure from ethnic blocs and cheap labor interests to maintain a de facto open border prevails.

But while the president and Congress are busy seeking ways to allow millions of illegal immigrants to gain amnesty, and numerous city and county governments (including San Francisco, Oakland and Palo Alto) have decided to accept Mexican-issued documents as a valid form of ID. Protection for those who have suffered as a result of unchecked illegal immigration has come from the unlikeliest of places.

The day after Labor Day, a three-judge panel of the Ninth

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Circuit U.S. Court of Appeals — the same court that declared the Pledge of Allegiance unconstitutional — ruled that workers who lost jobs or wages because employers knowingly hired illegal immigrants could sue those employers under the RICO (Racketeering Influenced and Corrupt Organization) statute. As part of the 1996 immigration law, Congress added the crimes of harboring or repeatedly hiring or harboring illegal immigrants as predicate acts for prosecution under the RICO statute. In addition to criminal prosecution by the government, the RICO laws attempt to undermine criminal enterprises by allowing injured parties to collect treble damages in civil suits.

Congress reasoned that if the clear motivation for employers to knowingly hire illegal immigrants is to save money on labor costs, then exposing them to significant financial penalties if they are caught would be a meaningful deterrent. Unlike the government, which for political reasons might not have the incentive to go after employer sanctioned scofflaws, competitors and displaced workers certainly would.

In March 2000, a group of U.S. citizens and legal immigrant workers did just that. The workers alleged that two Washington state fruit-packing companies had

conspired with a labor contractor to hire illegal immigrants to depress the wages of legally authorized workers. In their Sept. 3 ruling, the Ninth Circuit panel agreed that the injuries suffered by the workers were “direct,” which is a crucial technical element proving causation under RICO. The judges went on to note, “We are unable to discern a more direct victim of illegal conduct.”

The Ninth Circuit ruling comes on the heels of a 2001 decision by the Second Circuit U.S. Court of Appeals. In that case, the court ruled that under RICO, a Connecticut cleaning company had standing to sue a competitor who had gained an unfair advantage through the systematic practice of hiring illegal immigrants.

These two rulings, by two separate federal appellate courts, will dramatically change the way immigration policy is enforced in America. It is the profit motive — i.e., the desire of many employers to hire workers who will work at lower wages — that has fueled illegal immigration to the United States. As a result of these legal decisions, competitors and displaced workers now have an equally powerful financial incentive to seek redress for their losses in civil court, for the monetary penalties under RICO are not just a slap on the wrist.

While the two precedent-setting

cases involved small companies who engaged in a pattern and practice of hiring illegal immigrants, there is big game to go after and big money to be collected, making this form of litigation very attractive to the legal profession. Companies such as Tyson Foods — which faces criminal prosecution for not just employing illegal immigrants,

but for smuggling them into the country — have become inviting targets for suits by workers and competitors who have been injured by years of flagrant violation of immigration laws.

Nothing has been able to motivate the American government to enforce its immigration laws —

not overwhelming public support for tighter controls, not even the reality and continued threat of international terrorism. After decades of pleading for government action to curtail illegal immigration, the public's recourse may come down to the most American of all solutions: Sue the bastards! •